

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Sumter County

Honorable George M. McFaddin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LEVANCE DUNHAM,

APPELLANT

APPELLATE CASE NO. 2018-001438

RECORD ON APPEAL

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SC Court of Appeals

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE’S EXHIBIT #1 (VIDEO FROM TRAFFIC STOP)**

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

STATE,)

TRANSCRIPT OF RECORD
18-GS-43-0077

v.)

LEVANCE DUNHAM,)

DEFENDANT.)

July 26-27, 2018
Sumter, South Carolina

B E F O R E :

THE HONORABLE GEORGE M. MCFADDIN, JR., JUDGE;
AND JURY

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EXHIBITS

STATE'S:

No.	Description	I.D./EVD.
1	Video	4/87
2	Wanted flyer	4
3	Wanted flyer redacted	35/76
4	Chain of custody	83/84
5	Drugs	84/85
6	Crack pipes	106
7	Laboratory analysis	118/126
8	Drug analysis report	118/126
9	Chemical analysis report	118/126

1 (WHEREUPON, State's Exhibits 1 and 2 were
2 marked for identification only.)

3 MS. BEHARRY: Your Honor, may it please
4 the Court.

5 THE COURT: Yes, ma'am.

6 MS. BEHARRY: This is the case of State of
7 South Carolina versus Levane Dunham. This is true
8 bill indictment 2018-GS-43-0077. Your Honor, you
9 already have a true bill indictment with you,
10 already have a copy of our, the State's potential
11 witness list. Your Honor, we're here today on the
12 Defense's motion for a suppression, Your Honor.

13 THE COURT: All right.

14 Mr. Bridges.

15 MR. BRIDGES: Thank you, Your Honor. I
16 have two suppression motions, but I will start with
17 the first one 'cause it pertains to the traffic
18 stop.

19 THE COURT: Okay.

20 MR. BRIDGES: The second one only becomes
21 relevant if the traffic is admissible. This case
22 was initiated because Officer Young pulled over a
23 vehicle, a white Nissan, on Liberty Street downtown
24 for, that was driven and owned by Ms. Margaret
25 Tobias. The reason for that stop was listed as a

1 window tint violation. This was at 2:30 in the
2 morning. There was no testing done on the video
3 that I've seen of how he determined it was a window
4 tint violation. On the video I received he just
5 says under 27 percent is illegal, and he's quoting
6 the SunStreet statute on that, Your Honor, and that
7 is correct; but I don't see how he determined it was
8 under 27 percent. And ultimately, he just issues a
9 warning for that ticket.

10 To me, without any, there's no other
11 traffic violation cited for reason for the stop and
12 he didn't actually issue a ticket, nor -- I don't
13 know if he could have, I don't know if he had, it
14 doesn't say if he had testing devices to test it, to
15 test the window tint or to do anything with the
16 window tint, so to me I say this is a purely
17 prejudicial stop because he does not actually issue
18 a traffic citation and I don't know if he even had
19 equipment where he could have. And if it was for
20 speeding or a busted tail light you can say, yes,
21 that's a valid traffic violation; but the only thing
22 listed in the report and on the video, he mentions
23 pulling her over is a window tint violation.

24 THE COURT: Ms. Beharry.

25 MS. BEHARRY: Your Honor, first of all,

1 the first thing is that Mr. Dunham does not have
2 standing to challenge the traffic stop because he
3 was not the driver. However, Your Honor, we do have
4 our first witness here. We have two witnesses we
5 would like to call. If you find that he does have
6 standing, then we'll go ahead and call our first
7 witness, Your Honor, and he would be officer first
8 class Micah Young. He will give testimony as to the
9 violation, Your Honor.

10 THE COURT: So Mr. Bridges, what you're
11 saying is that if I uphold the traffic stop we won't
12 need to go to the next level?

13 MR. BRIDGES: Yes, 'cause he was seized as
14 part of that traffic stop. And he does have
15 standing in the case, Arizona versus Johnson. It
16 says passengers are seized as part of a traffic stop
17 they have standing to challenge the validity of the
18 traffic stop.

19 THE COURT: Okay. Now, do have with you
20 one or two cases you're gonna hand to me that
21 supports your position?

22 MR. BRIDGES: I can hand you Arizona v.
23 Johnson, but yes, standing, yes, sir. I'm not sure
24 I have it on me but.

25 THE COURT: I thought you were saying

1 there was, that the stop in itself was not valid; is
2 that right?

3 MR. BRIDGES: Well, the stop, there's, the
4 case law on window tint, there's not, there's not a
5 case saying that. But a traffic stop has to be --
6 there's a case, United States versus Sullivan, where
7 it says a traffic stop can be pre-textual for
8 another purpose if there is actually traffic
9 violation. So all I'm saying is there's not an
10 actual traffic violation here because he could not
11 have issued a window tint ticket because he didn't
12 test it and he didn't have the materials to test it.

13 THE COURT: Okay.

14 MR. BRIDGES: But I can pass up Arizona v.
15 Johnson.

16 THE COURT: Yeah, if you don't mind.

17 MR. BRIDGES: This is on standing. It
18 shows that passengers have standing to challenge a
19 traffic stop.

20 THE COURT: About that part of it, right?
21 On the standing issue, right?

22 MR. BRIDGES: Yes, about the standing
23 issue, right.

24 THE COURT: Ms. Beharry, do you want to
25 hand me anything? Do you have anything?

1 MS. BEHARRY: Your Honor, we will just
2 present testimony in reference to our, to the
3 State's position that the traffic stop was valid,
4 Your Honor.

5 THE COURT: All right. This, I want to
6 take a few minutes to read this, think about it; but
7 now what's -- if I find the stop was valid,
8 Mr. Bridges, what's the next issue that I will be
9 dealing with? Just give me an idea about what we're
10 ---

11 MR. BRIDGES: Thank you, Your Honor.
12 There'd be an issue under Jackson v. Denno and just
13 Miranda v. Arizona. Once Officer Young approached
14 the vehicle he observed that Mr. Dunham was a
15 passenger, he asked Mr. Dunham what his name is.
16 Mr. Dunham gives him a name that is not his name.
17 Mr. Young represents that he's familiar with Mr.
18 Dunham and he says, then he says -- and the sequence
19 of this is very important. He says, tell me your
20 real name or I'll charge you. At that point
21 Mr. Dunham gives him his name. He's able to verify
22 that he has a warrant. They take him out of the
23 car. I guess they search him incident to that
24 warrant; that's when they find the alleged drugs.
25 And I would say that he was in custody at that

1 point, he should have been mirandized, so his
2 statement would be admissible under Jackson v. Denno
3 and the evidence should be suppressed under Miranda
4 versus Arizona because he was not, he was in custody
5 at that point, he was not advised of his rights.

6 THE COURT: Okay. Where were the drugs
7 found?

8 MR. BRIDGES: They are alleged to have
9 been found on his person when he was searched
10 outside the car.

11 THE COURT: Okay. Ms. Beharry, you want
12 to touch on that? Now I'm going to do this in two
13 steps, but tell me your response about that one
14 briefly. If I have to come back to you, I will.

15 MS. BEHARRY: Okay, your Honor. Your
16 Honor, first of all, the Miranda rights do not apply
17 in this case, Your Honor, because our case in State
18 v. Silva has held that traffic stops do not require
19 Miranda rights, Your Honor. A law enforcement
20 officer is allowed to ask preliminary questions. In
21 this case the officer only asked Mr. Dunham his
22 name. That's all he asked him. However, Your
23 Honor, the officer, he asked him his name just to
24 confirm who he was, but law enforcement already knew
25 that that was Mr. Levane, one, because he already

1 had a wanted flyer that the officer had on his
2 person showing that Mr. Dunham was wanted for
3 forgery, Your Honor. He's had interaction with Mr.
4 Dunham before. But because of procedure the officer
5 just asked him to confirm to do a check to make sure
6 that the arrest, the outstanding warrant that he
7 knew it was still valid and relevant so the search
8 was incident to the arrest for the forgery, not
9 necessarily for the officer, for Mr. Dunham lying to
10 the officer. In fact, the sequence of the video is
11 of such the officer stops the car, tells Ms. Tobias
12 we're pulling you for a tint violation, asked her
13 for her name, asks Mr. Dunham for his name first.
14 He lies to the officer. The officer says, I know
15 you're lying to me, I know who you are, tell me,
16 tell me your name or I'm gonna charge you. It's not
17 a threat. It was not a coercion. He was just
18 telling him, look, you don't want another charge on
19 you. In fact, he only gave him his first name and
20 the officer responded to Officer Robinson, said hey,
21 that's Dunham, that's Dunham, that's an outstanding
22 warrant. You can hear that on the video, Your
23 Honor. So when they pulled him out the first thing
24 they said to him is we're arresting you for the
25 forgery. And that arrest led to, the lawful arrest

1 led to the search and that's when they found the
2 crack pipe, the crack on him, Your Honor.

3 THE COURT: Okay, all right. I will go
4 back here and read the case. It's so awkward to
5 read these long cases in front of people and so
6 awkward for y'all also. I'll go back here and
7 address the first part of this.

8 MR. BRIDGES: And 'cause I have cases for
9 the second part, but we're not there yet so I.

10 THE COURT: Okay, all right.

11 MS. BEHARRY: Your Honor, would you like a
12 copy of State versus Silva?

13 THE COURT: If you have it with you.

14 MS. BEHARRY: Yes, sir, I do. May I
15 approach.

16 THE COURT: Yes, sir.

17 (Pause.)

18 (WHEREUPON, counsel approached the
19 Bench for an off-the-record discussion.)

20 THE COURT: Thank you, I'll be back
21 shortly.

22 (WHEREUPON, a recess was taken from the
23 proceedings.)

24 THE COURT: Mr. Bridges, is it your
25 contention that the initial stop was not proper?

1 MR. BRIDGES: Yes, Your Honor.

2 THE COURT: I respectfully disagree and
3 deny that motion. So where we find our ourselves
4 now?

5 MR. BROWN: Your Honor, if that is the
6 court finding — Tyler Brown for the State. Your
7 Honor, Ms. Beharry is prepared to call this case for
8 trial. This is the one that she was prepared to
9 call the other day. Mr. Dunham had a doctor
10 appointment that you granted a continuance to today
11 so we are prepared to call that case at 2:00. We
12 just want to go ahead and get the suppression issues
13 out of the way so at 2:00 we can start rolling.

14 MR. BRIDGES: I guess the next issue would
15 be the admissibility of his statements he made
16 during the traffic stop.

17 THE COURT: Yes, sir. We can take up
18 later.

19 MR. BROWN: We can do that right now. We
20 have all the officers present that we need present
21 for that, Your Honor.

22 THE COURT: If y'all are ready to do that,
23 that's fine then. But based on, Mr. Bridges, I find
24 it was probable cause to make that stop.

25 MR. BROWN: Your Honor, I'm prepared to go

1 forward. If you want me to go ahead and proceed I
2 can do that.

3 THE COURT: Does that suit you, Mr.
4 Bridges?

5 MR. BRIDGES: I don't have issue with
6 that, Your Honor. I don't know if Ms. Beharry wants
7 to be in here or not.

8 MR. BROWN: She'll be back very shortly.
9 There she is.

10 THE COURT: All right. Ms. Beharry, I
11 denied his first motion, ma'am. So we're ready for
12 the Denno hearing I guess. Is that right?

13 MR. BRIDGES: Yes. Yes, Your Honor.

14 THE COURT: Okay. All right.

15 MS. BEHARRY: Your Honor, the State would
16 like to call Officer Micah Young to the stand
17 please.

18 THE CLERK: Place your left hand on the
19 Bible, raise your right hand. State your name
20 please.

21 THE WITNESS: Officer Young, Micah Young.
22 WHEREUPON,

23 MICAH YOUNG,
24 having been duly sworn by the Clerk, testified
25 as follows:

1 THE CLERK: Thank you, sir. State your
2 name for the record, spell your last name please.

3 THE WITNESS: Micah Young. Last name is
4 Y-O-U-N-G.

5 **DIRECT EXAMINATION**

6 BY MS. BEHARRY:

7 Q Officer Young, I know you're tired and you're
8 going off of zero sleep.

9 A That's okay.

10 Q So we appreciate you coming in and testifying.
11 Tell us, tell the Court a little bit about yourself.
12 Where do you work?

13 A I work at Sumter Police Department, and I've been
14 working here for approximately five years, two in
15 dispatch, and U.S. police officer.

16 Q Okay. What are some of your duties there?

17 A As a police officer we check property, enforce
18 laws, check to pretty much make sure Sumter is safe,
19 you know, keep the peace.

20 Q Okay. Was traffic patrol one of those?

21 A Yes, sir. I mean, yes, ma'am, enforce laws.

22 Q All right. Let's go straight into, on
23 October 25th, 2017, were you employed doing traffic
24 patrols at that time?

25 A Yes, ma'am, I was freely doing traffic patrols.

1 Q Can you explain to the Court your interactions on
2 that day with a white Nissan. Explain to the Court
3 how you initiated the traffic stop and who was the
4 driver. Tell us the night of that event.

5 A Yes, ma'am. It was around 2:00 in the morning I
6 observed a white Nissan with all the windows rolled
7 up with dark tint that you could not see inside. I
8 then initiated a traffic stop. It was at Main
9 Street and Liberty. When I walked up app, against
10 the vehicle on my body camera you can also see it,
11 but when I shine my light against the window you
12 cannot see anything, inside it's pitch black. I
13 actually had to tap on the window and she rolled the
14 window down before I got up there. I made contact
15 with Ms. Tobias, Margaret Tobias, she was the
16 driver. She, I advised her of the law and she
17 advised she got the vehicle like that.

18 Q Okay. Who else was in the vehicle with you, with
19 her?

20 A With her? Mr. Dunham.

21 Q Okay. Is the defendant present here in the
22 courtroom today?

23 A Yes, ma'am.

24 Q Can you point him out to us.

25 A He's right there next to Mr. Bridges.

1 Q Okay. Who else was on patrol with you that day
2 in your car?

3 A In my car?

4 Q Yes, sir.

5 A This is me in my car. In a different car was
6 Patrolman Robinson.

7 Q Is she here today?

8 A Yes, ma'am.

9 Q Point her out in the courtroom please.

10 A She's right there.

11 Q Okay. And she's also employed with you're with
12 the —

13 A City of Sumter.

14 Q —police department, okay?

15 A Yes, ma'am.

16 Q Were you guys on shift together?

17 A Yes, ma'am.

18 Q Okay.

19 MS. BEHARRY: Your Honor, may I approach
20 the witness.

21 THE COURT: Yes, ma'am.

22 BY MS. BEHARRY:

23 Q I'm handing you what has been premarked for
24 identification as exhibits, State's Exhibits 1 and
25 State's Exhibit 2. Do you recognize what I'm

1 showing you?

2 A Yes, ma'am.

3 Q Explain to the Court what State's Exhibit Number
4 1 is.

5 A State's Exhibit Number 1 is gonna be the body cam
6 video of the incident that occurred, and you want me
7 to explain the second one?

8 Q Yes, please explain State's Exhibit 2.

9 A The second one is a warrant flyer that we
10 received at rotation of shift of Mr. Dunham for the
11 warrant poster, forgeries.

12 MS. BEHARRY: Your Honor, the State moves
13 exhibit -- let me show it to.

14 MR. BRIDGES: This isn't trial so my
15 objections are kind of irrelevant. I'm not opposed
16 to this for this hearing.

17 THE COURT: Yes, sir, for this hearing, I
18 understand.

19 BY MS. BEHARRY:

20 Q While we're getting this ready explain to the
21 Court, again, just for clarification so it will read
22 into the record, why did you pull over the vehicle?

23 A The tint violation, ma'am.

24 Q Tint violation.

25 MS. BEHARRY: Your Honor, I'm approaching

1 with this one for just demonstrative.

2 THE COURT: Yes, ma'am.

3 BY MS. BEHARRY:

4 Q Explain to the Court which one of these is the
5 regulation tint.

6 A The regulation tint would be the top one. It
7 would be 27 percent.

8 Q Okay. Are all vehicles required to have that
9 sticker on it?

10 A Yes, ma'am. They're supposed to have the actual,
11 whose done it and what's the percentage on it.

12 Q And which one of these tints would you say was
13 the tint that was on the vehicle that you pulled
14 over?

15 A It was actually darker than this last one here.
16 It was double. It was more like they did it
17 themselves.

18 Q Okay. And this dark tint was the reason you
19 pulled over the vehicle?

20 A Correct.

21 Q Okay. Prior to going on shift that day did you
22 all receive a briefing?

23 A Yes, ma'am.

24 Q Can you explain to the Court what kind of
25 briefing you received.

1 A Normally in any briefing we have on shift you
2 always have, you go over what happened during last
3 rotation and you always, you go over the wanted
4 people in the flyers as well. That's what brought
5 us to Mr. Dunham's flyer.

6 Q Okay. What's been premarked for State's Number
7 2, was that the flyer that you had on you the day
8 that you pulled over Ms. Tobias' car?

9 A Yes, sir.

10 Q And explain to the Court what's that flyer
11 please.

12 A Basically this is a warrant flyer. It's for Mr.
13 Levance Dunham. It has a picture of Mr. Levance
14 Dunham on it. It says what he's wanted for and he's
15 wanted for forgery.

16 MS. BEHARRY: Your Honor, at this time
17 we'd like to play the video for the Court please.

18 THE COURT: All right, ma'am.

19 MR. BRIDGES: No objections, that's fine.

20 (State's Exhibit No. 1 was played.)

21 MS. BEHARRY: After this point, Your
22 Honor, there was no other interaction with the
23 defendant. After he says he doesn't know what it
24 is, the police leaves it alone; but there's a part
25 that I'm gonna show you where the law enforcement

1 did have this wanted sign with him. Albeit, Your
2 Honor, you can only see this part, but this is what
3 we were referring to when you're talking about the
4 wanted sign so I'll just go quickly to that part.

5 THE COURT: Okay.

6 (Playing of State's Exhibit 1 continued.)

7 MS. BEHARRY: Your Honor, there's the part
8 where you can see part of the wanted sign. I
9 thought you would know exactly. That's it right
10 there. That was the wanted sign that the officer
11 had on them for him, Your Honor.

12 THE COURT: Yes, ma'am.

13 BY THE STATE:

14 Q And so just, I have a few more followup
15 questions. When you saw the car did you know that
16 Dunham was in that car before pulling it over?

17 A No, ma'am, 'cause all the windows were up.

18 Q Okay. Could you have seen in the windows with
19 them being up?

20 A I can't see it. I can't see at all inside of it.

21 Q Okay. So just for some reason, the reason you
22 pulled the car over was because of?

23 A The tint violation.

24 Q And you arrested, and you arrested Dunham
25 because, why did you arrest him?

SW - M. YOUNG - CROSS

1 A For the forgery charge and the crack cocaine.

2 Q Okay. Please answer -- hold on one second. Just
3 three, a couple of questions. When you, did you ask
4 Dunham his name for confirmation purposes?

5 A Yes, ma'am, I was gonna see if he was going to
6 actually tell me what his name 'cause I already knew
7 what his name was.

8 Q When you refer to the statement to him about
9 lying or telling the truth, if he had lied to you
10 what could you have charged him with?

11 A I can't remember exactly the charge, but I think
12 it was interfering but -- it's a false information
13 to police charge; that's it was.

14 Q Okay. No more questions for you. Could you
15 please answer any questions that defense counsel may
16 have.

17 A No problem.

18 THE COURT: Mr. Bridges.

19 MR. BRIDGES: Thank you, Your Honor.

20 **CROSS-EXAMINATION**

21 BY MR. BRIDGES:

22 Q Good morning, Officer Young.

23 A Good morning.

24 Q So when you stopped the car ---

25 A Yes, sir.

SW - M. YOUNG - CROSS

- 1 Q ---Mr. Dunham was in the passenger seat, correct?
- 2 A Yes, sir.
- 3 Q The questions you asked about his name, that
- 4 didn't, you were trying to confirm his identity?
- 5 A Yes, sir. Normally that's standard procedure.
- 6 When you actually go to a vehicle you ask for ID's,
- 7 or you know, what your name is.
- 8 Q Did you have an idea who he already was?
- 9 A Yes, sir.
- 10 Q 'Cause he gave you a name on that video?
- 11 A Correct, he gave Matthew Hampton.
- 12 Q And how did you know that that was an incorrect
- 13 name?
- 14 A We are involved with Mr. Dunham on DV cases and
- 15 other charged cases.
- 16 Q So did you suspect he had an open warrant?
- 17 A No, I knew he had an open warrant.
- 18 Q You knew he had a warrant. So why did you ask
- 19 him any questions at all?
- 20 A You said why did I ask him questions?
- 21 Q 'Cause you could have just ---
- 22 A I give him a chance.
- 23 Q But if you knew it was him you could have just
- 24 taken him out of the car, correct?
- 25 A We have to confirm everything before we

SW - M. YOUNG - CROSS

1 actually ---

2 Q You have to confirm everything.

3 A Yes, sir.

4 Q So is that why, so you asked him for his name or
5 for his real name we saw on there. Why did you say
6 tell me what your name is or I'll charge you?

7 A You said why did I say that?

8 Q Yes.

9 A I mean, 'cause that's basically, it's false
10 information to police. I mean, that's an arrestable
11 charge.

12 Q So you were about to arrest him based on his
13 answer to that?

14 A I would have charged him for it.

15 Q So did you make him aware of his rights not to
16 answer that question when you asked that question?

17 A Did I make him aware of his rights?

18 Q Yeah. Did you give him the Miranda warnings as
19 they're called, during that video at any time?

20 A No, sir, I already knew who he was. I mean, at
21 that point I just confirmed his ---

22 Q But you were about to take him into custody and
23 then you, in fact, put handcuffs on him or had the
24 other officer put handcuffs on him during that
25 video?

SW - M. YOUNG - CROSS

1 A No, sir, I just confirmed who his identity was,
2 that was it.

3 Q But then you had to come back to the car asking
4 how his name was pronounced?

5 A Yeah, he pronounces it Levance or something like
6 that, like some Italy name.

7 Q And then you also asked him to confirm his
8 birthday?

9 A Yeah, it's confirmation check with the warrant
10 check, that's all it is.

11 Q And then he was taken out of the car and
12 handcuffed because you confirmed you had the
13 warrant.

14 A Yes, sir, I mean, I already knew who he was and
15 he had a warrant so.

16 Q When you put the handcuffs on him did you, again,
17 give him Miranda warning?

18 A At that point he was arrested.

19 Q He was under arrest, though, did you him the
20 Miranda warning?

21 A No, sir.

22 Q And then I saw — when at the police station did
23 you give him Miranda warning?

24 A For being under arrest for warrant?

25 Q For I mean, for telling, 'cause — do you tell

SW - M. YOUNG - CROSS

1 him and the driver that, you know, tell them what
2 they're gonna be charged with?

3 A Yeah, I let him know before, you know, we get
4 there.

5 Q But did you advise them of their rights?

6 A I just tell them what they're charged with, sir.

7 Q So they were, but at that point they're at the
8 police station and they're in police custody?

9 A Which part, sir?

10 Q Well, multiple -- so when you're asking Levance
11 what his name is, was he free to leave the car at
12 that point?

13 A No.

14 Q And he also had to tell you what his real name
15 was or you were gonna charge him with giving false
16 information?

17 A Being because I already had prior knowledge of
18 what his name was.

19 Q And you also had prior knowledge he had a
20 warrant?

21 A Yes, sir.

22 Q And at no time did you advise him that he had the
23 right to not say anything?

24 A Say it again.

25 Q At no time either before you had him out of the

SW - M. YOUNG - REDIRECT

1 car in handcuffs or when he was in the car did you
2 ever advise him that he did not have to answer any
3 of your questions, that he had the right to not
4 answer any of your questions?

5 A No, sir, I didn't tell him anything.

6 Q Okay. No further questions.

7 A Yes, sir.

8 THE COURT: All right. Ms. Beharry.

9 MS. BEHARRY: One question, Your Honor.

10 **REDIRECT EXAMINATION**

11 BY MS. BEHARRY:

12 Q Did you ask him about any pending charges that he
13 had?

14 A No, ma'am.

15 Q Other than informing him that you were arresting
16 him for the forgery, did you question him about the
17 forgery?

18 A No, ma'am.

19 Q Okay. And everything that we've seen on the
20 video, is that the totality of your interaction with
21 Dunham?

22 A Yes, ma'am.

23 MS. BEHARRY: No further questions, Your
24 Honor.

25 THE COURT: Mr. Bridges, anything else

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1 sir?

2 MR. BRIDGES: Just follow up.

3 **RECROSS-EXAMINATION**

4 BY MR. BRIDGES:

5 Q When did you actually tell Mr. Dunham there was

6 —

7 A When he stepped out the car.

8 Q And that's when you told him there was a warrant?

9 A No, when I actually told him he had a warrant?

10 Q Yeah.

11 A Yeah, when he stepped out the car.

12 Q And that's when he was placed in handcuffs?

13 A Yes, sir. We let him know, hey, you have a
14 warrant, step out the car.

15 Q And you didn't verify that until after —

16 A We verified it during dispatch, sir.

17 Q Yes. Well, I see it on the video but, and it's
18 also after you get his name from him and you come
19 back and call it in, you know, run a warrant check
20 on Levane Dunham, Levance Dunham?

21 A Say that again?

22 Q The sequence of the video, you asked him what his
23 name is.

24 A Okay.

25 Q And then you asked him, tell me what your name is

SW - M. YOUNG -- RECROSS

1 or I'll charge you, and then he tells you it's
2 Levance.

3 A Correct.

4 Q And then that's when you go to confirm his
5 warrant, correct?

6 A Yeah. We make sure we confirm his warrant before
7 I ask him to step out the car.

8 Q Yea, and that -- but, well, you started that
9 process after he told you his name was Levance?

10 A Yeah, yes, sir.

11 Q Yes. And the first name he told you was not
12 Levance?

13 A It was Matthew Hampton.

14 Q So he told you his name is Levance after you told
15 him tell me what your name is or I'll charge you?

16 A Yes, sir, 'cause I already knew his name.

17 Q All right. No further questions.

18 THE COURT: Anything else, Ms. Beharry?

19 MS. BEHARRY: Nothing else, Your Honor.

20 THE COURT: Thank you, sir. May he be
21 allowed to leave at least for now I guess?

22 MS. BEHARRY: Until after --

23 THE COURT: Whatever you want to do.

24 MS. BEHARRY: He can stay around a little
25 bit, Your Honor, please.

SW - M. YOUNG - RECROSS

1 THE COURT: All right. Anything else,
2 Ms. Beharry?

3 MS. BEHARRY: Nothing else from the State
4 in reference to this motion, Your Honor.

5 THE COURT: Okay, I've already dealt with
6 one, now this one. Is there something else, another
7 motion today?

8 MR. BRIDGES: Well, it would only be, if
9 this actually goes to trial I would object to a lot
10 of the audio on that video 'cause they mention him
11 having a warrant. I think it'd be very prejudicial
12 for the jury to hear all that.

13 THE COURT: I see, I see. All right, so
14 you're finished, Ms. Beharry, and Mr. Bridges,
15 anything from you, sir?

16 MR. BRIDGES: Just to go on with the, you
17 just want more arguments on the motion for the Court
18 to suppress?

19 THE COURT: I got a pretty good earlier
20 what you were going to tell me.

21 MR. BRIDGES: I have ---

22 THE COURT: I did, I did.

23 MR. BRIDGES: But I have a case, State
24 versus Evans, but I see it's just a ---

25 THE COURT: Sure, let me see it.

1 MR. BRIDGES: --Miranda requires the
2 totality of the circumstances.

3 THE COURT: Yes, sir. All right, my
4 ruling here on this, first of all, I go back to the
5 earlier ruling. I find it was a lawful traffic
6 stop, probable cause did exist, whether or not the
7 warrant was charged or not is not to me dispositive
8 of being probable cause. Did the officer recognize
9 the defendant, arrest him on the basis -- if I'm
10 wrong now, y'all tell me -- on the basis of
11 outstanding warrant that he was aware of, already
12 aware of earlier that night before he'd been on the
13 street on his patrol, he was, stepped out of the
14 car, was placed in handcuffs, and in search of his
15 person incident to an arrest found a crack pipe. Is
16 that right?

17 MS. BEHARRY: Crack cocaine, yes, Your
18 Honor.

19 THE COURT: Well, some kind of drugs,
20 okay. I find that was search incident to a proper
21 arrest and I don't suppress any of the evidence from
22 that. I don't find, I did read the Evans case,
23 Mr. Bridges. I don't find that that traffic stop
24 was equivalent to what they call here a functional
25 equivalent of a custodial interrogation. In any

1 traffic stop, and I don't remember the precise
2 terminology from search and seizure of law; but in
3 any traffic stop, inherent is some degree of a
4 reasonable detainment for the purposes of completing
5 that traffic stop to find out whether or not a crime
6 was committed and so forth. I don't see it as an
7 custodial arrest situation where he was put in a
8 room for hours or even any great period of time so,
9 once again, I issue my ruling. I compliment you,
10 Mr. Bridges, I think it was a good motion to make.
11 I would have made it too if I were in your shoes;
12 and the fact that I didn't rule against you has
13 nothing to do with your abilities. All right, so
14 there we are.

15 MR. BROWN: Your Honor, if I may.

16 THE COURT: Yes, sir.

17 MR. BROWN: Defense counsel just now
18 mentioned, and we appreciate your ruling, Defense
19 counsel just now mentioned wanting to redact
20 portions of the video that mentioned that he had
21 other pending charges. Your Honor, because
22 obviously we will have to, based on how Your Honor
23 would rule, do some manipulation to the video if
24 Your Honor did rule that way, can we address that so
25 we can go on our lunch break knowing what we need to

1 do on that?

2 THE COURT: Yeah, and I think it's only
3 fair to the defendant that when the jury hears this
4 they don't hear about other warrants.

5 MR. BROWN: If I can respond to that, Your
6 Honor.

7 THE COURT: Well, what charge is he going
8 forward on today?

9 MR. BRIDGES: It's the possession of crack
10 cocaine. It's not the forgery that he had the
11 warrant for.

12 THE COURT: Well, what you got, Mr. Brown?

13 MR. BROWN: Your Honor, our concern, the
14 State's concern about that is if we don't mention
15 that he was being arrested because he had other
16 outstanding warrants, we think a curative
17 instruction ---

18 THE COURT: You can mention that now
19 'cause that was, that's what led to his arrest was
20 that outstanding warrant.

21 MR. BROWN: And that's what's in the video
22 that he's asked to be redacted ---

23 THE COURT: I thought I heard that he had
24 used other charges. Are there warrants out there?

25 MR. BRIDGES: Well, there's a warning, the

1 warrant that's out there is different than what he
2 was charged with.

3 THE COURT: Okay. I'll let you get into
4 that one.

5 MR. BROWN: That's right. And that's all
6 we're asking to get into.

7 MR. BRIDGES: But I would request a
8 curative instruction about he's not on trial for
9 that. He actually, that's still an open case. He
10 hasn't pled guilty or anything on that.

11 THE COURT: Right, right. I'll let you go
12 into that charge, okay.

13 MR. BROWN: That's what we wanted to make
14 sure. We didn't want them to be able to say they
15 didn't have reason to stop. That's our reason to
16 stop.

17 MR. BRIDGES: And I would just request
18 limiting that it's nothing about his character, this
19 is nothing about any dispositive opinion being
20 convicted of anything.

21 THE COURT: I understand, I understand.

22 MR. BRIDGES: But that audio becomes
23 problematic.

24 THE COURT: Yes, sir.

25 MR. BROWN: Your Honor, I don't know if

1 you had a chance to take a look at the warrant
2 poster. We've given a copy to defense counsel.
3 Obviously because that does go to the weight of
4 Officer Young knowing that he had Levance Dunham in
5 front of him, that it has his picture there. We
6 obviously plan to use that. But there is some
7 language in there that, if it pleases the Court and
8 if defense counsel doesn't object to it, permission
9 to approach with the extra ---

10 THE COURT: Yes, sir.

11 MR. BROWN: Underneath the wanted for
12 forgery which is what he had the outstanding warrant
13 for, there's some language that I think in all
14 fairness I probably need to take a picture and block
15 it out with black lettering.

16 THE COURT: Yes, sir.

17 MR. BRIDGES: I object to that poster in
18 full. I think the officer is gonna testify as to
19 the warrant, why is that, I think that's kind of
20 superlative. That is kind of superfluous just
21 showing, oh, yes, he's a bad guy.

22 THE COURT: Well, Mr. Bridges, if he's
23 going to testify it was an open warrant and that's
24 why ---

25 MR. BRIDGES: Warrant poster ---

1 THE COURT: ---does that ---

2 MR. BRIDGES: So really keep the jury up
3 high does that need to go in.

4 THE COURT: I got you. What does that
5 need to go in?

6 MR. BROWN: Because Your Honor, the
7 officer said right from the start, well, I know who
8 you are, I know you're Levance Dunham. The reason
9 he knew that is because he had this poster. He had
10 this picture that he had looked at just that day,
11 and that he had in his car so that's good evidence
12 right there.

13 THE COURT: Why can't he just tell the
14 jury that he was notified at their meeting that
15 night about an open warrant on Mr. Dunham ---

16 MR. BROWN: I ---

17 THE COURT: And ---

18 MR. BROWN: I'm sorry, I didn't mean to
19 interrupt, Your Honor.

20 THE COURT: If that's o-- I mean.

21 MR. BROWN: Your Honor, just simply
22 because his picture is on that, that is how he
23 identified Levance Dunham. That way we don't have
24 to get into the fact he had numerous other arrests
25 or anything like. That's how he knew right there

1 and then.

2 THE COURT: All right, I'll allow that,
3 but I want the rest of it blocked out.

4 MR. BROWN: We'll put a black block over
5 the top of it, Your Honor.

6 THE COURT: Yes, sir. All right, anything
7 else before we break for?

8 MR. BROWN: No, sir, Your Honor. We're do
9 those redactions on this wanted poster, and we'll
10 put that one into evidence.

11 THE COURT: Can I speak to y'all over here
12 please.

13 MR. BROWN: Yes, sir.

14 (WHEREUPON, counsel approached the
15 Bench for an off-the-record discussion.)

16 THE COURT: See you shortly.

17 (Whereupon, a lunch break was taken.)

18 (WHEREUPON, State Exhibit No. 3
19 was marked for identification only.)

20 (WHEREUPON, counsel approached the
21 Bench for an off-the-record discussion.)

22 (WHEREUPON, a recess was taken from the
23 proceedings.)

24 THE COURT: Ms. Beharry.

25 MS. BEHARRY: Your Honor, may it please

1 the Court, before you is the State of South Carolina
2 versus Levane Dunham. This is a true bill
3 indictment 2018-GS-43-0077. Your Honor, you already
4 have the true bill indictment before you, as well as
5 the State's witness list.

6 THE COURT: Mr. Bridges, are you ready,
7 sir?

8 MR. BRIDGES: Yes, Your Honor.

9 THE COURT: Ladies and gentlemen of this
10 jury panel, I am going to ask you some questions to
11 further refine the number of persons chosen in this
12 trial. If a question applies to you, please stand
13 up. I'm blinded to a great degree by these lights
14 up here so I'll ask others to tell me if you stand
15 up and I miss seeing you stand up. We're about to
16 start the trial of the case of the State of South
17 Carolina versus Levance Dunham, and I will ask the
18 clerk now to swear the panel as to the accuracy of
19 questions that I will ask.

20 THE CLERK: Ladies and gentlemen of the
21 jury, would you please stand to be sworn.

22 (WHEREUPON, the jury was sworn at
23 2:46 p.m.)

24 THE CLERK: Are there anyone who did not
25 took the oath?

1 reminded me I need to place on the record the fact
2 that there were no issues as to the drawing and
3 selection of the jury meaning there are no Batson
4 issues. Correct, ladies and gentlemen, lady and
5 gentleman?

6 MS. BEHARRY: Yes, sir.

7 THE COURT: Thank you for your help; I do
8 appreciate it. As I have told you many times, my
9 robe only comes with cleaning instructions, okay?

10 All right, I'm ready, Ms. Beharry.

11 MS. BEHARRY: Your Honor, may it please
12 the Court.

13 THE COURT: Yes, ma'am.

14 MS. BEHARRY: My name is Mat, Matthew
15 Hampton. Yes, you have a surprised look on your
16 face and the reason you do so 'cause I just stood
17 here in this courtroom and introduced myself to you
18 as Lisa Beharry with my cocounsel for the State so
19 you know I'm lieing. I don't look like a Mat. I
20 don't look like a Mat Hampton; I just told you my
21 name. In this case that's exactly what you're gonna
22 hear today. Law enforcement pulled over a vehicle
23 for a tint violation, a noticeable tint violation.
24 They pulled over a vehicle, asked the driver to wind
25 down the window because they couldn't see,

1 approaches the vehicle, standard operating
2 procedure. And I know law enforcement gets a lot of
3 negative social exposure to these things, but in
4 this case the Sumter law enforcement officers did
5 the right thing. They did the very right thing;
6 they didn't do anything wrong. They asked for her
7 ID card. She gives it to him. Looks over to the
8 driver and goes, sir, can I get your I-- what's your
9 name, tell me your name, and can you give me your
10 I.D. card. Instead of being honest he said his name
11 was Mat, Matthew Hampton, and he's from Turbeville.
12 That gets a chuckle from the officer. Yes, the same
13 chuckle you had when I told you my name was Mat
14 Hampton; it's the same chuckle that they had when he
15 told him. And he told him, he said, Bo, be honest
16 with me, I know who you are, be honest with me so
17 that you can avoid a charge, lying to police
18 officer. He was giving him a break. How does this
19 police officer know that this defendant Mr. Levane
20 Dunham was lying to him. You know why they know?
21 They got the picture of him in the car. How did
22 they get the picture? They got a wanted picture out
23 there saying Levane Dunham is wanted so he knew who
24 he was talking about. He didn't have to guess. He
25 didn't have to get his ID card. He knew exactly who

1 he was, but he gave him a chance to be honest and he
2 didn't. That's why we're here today.

3 The law enforcement officer pulls him out
4 of the car, checks his pocket, empties it out, and
5 guess what they found. Yes, his ID card with his
6 name on it, Levance Dunham. He could have saved the
7 officer all of the trouble, but he chose not to, he
8 chose to lie. Then the officer empties his pocket,
9 takes out a number of things, and put it in, asked
10 him, you know what that is? No, I don't. Officer
11 says, okay, didn't ask him anymore questions. Field
12 tested by the officer, crack cocaine. The officer
13 bags it, tags it, sends it to our evidence. Guess
14 what it comes up to be. Crack cocaine.

15 That is the summary of the evidence that
16 you're gonna look at today. But guess what? You
17 get to see it on the camera. You get to see the
18 whole thing on camera and you get to judge that for
19 yourself. You get to line up everything I've just
20 told you with the video that you're gonna see. Oh,
21 and you're gonna get to see the wanted picture as
22 well. And that is the summation of the evidence.
23 It's not complicated; it is that simple. I'm not
24 minimizing it, but I'm just explaining to you the
25 level of complexity of this case. Ladies and

1 gentlemen of the jury, thank you for being here. I
2 want to say thank you, but I wanted to summarize
3 that for you so you know that we're not up here to
4 waste your time and give you any gimmicks.

5 Now why are you here, why am I telling you
6 this? Everyone in this courtroom has a role. The
7 judge just told you his. He's here to make sure
8 that I play fair and that I follow the rules and
9 that I do everything I'm supposed to according to
10 the laws of South Carolina. That's his job; he's
11 the referee. My job is to present that evidence to
12 you beyond a reasonable doubt that this defendant
13 was pulled over and crack was found in his pocket,
14 but I've got to present that evidence to you beyond
15 a reasonable doubt. That standard is not beyond
16 every possible doubt. It's just that you are firmly
17 convinced based on the evidence before you when you
18 look at it for truth, reliability, when you look it
19 at for those things and you can go away from looking
20 at the evidence and say, yes, Mr. LeVane Dunham is
21 guilty beyond a reasonable doubt of possessing crack
22 cocaine at the traffic stop.

23 The defendant in this case is innocent
24 until proven guilty. He doesn't have to tell you a
25 thing and that's a good thing. We're the ones that

1 said he violated our laws. We're the ones that got
2 to prove it beyond a reasonable doubt and that is a
3 burden the State is happy to carry because we want
4 to uphold our laws and we want you to have the right
5 thing to do so the State is firmly convinced that at
6 the end of all this evidence you will return a
7 guilty verdict for Mr. Levane Dunham for having
8 crack cocaine in his pocket against our laws. Thank
9 you for your time.

10 THE COURT: Mr. Bridges.

11 MR. BRIDGES: Thank you, Your Honor. May
12 it please the Court. Ladies and gentlemen, as I
13 mentioned earlier, my name is Jason Bridges. I'm
14 the attorney for Mr. Levance Dunham who's on trial
15 today. I'd like to extend the Solicitor's thanks in
16 that this trial would not be possible without your
17 service. I know it's probably not in the top fifty
18 things you want to do this week. You want to do
19 right now in particularly, but really we cannot be
20 here without you. A jury trial, a trial of a jury
21 in front of your peers is a fundamental right that
22 we all have, and Mr. Dunham is getting his day in
23 court in this.

24 And there's other fundamental rights that
25 are big issues in this case. The Fourth Amendment

1 protects against unreasonable searches and seizures.
2 The Fifth Amendment protects against
3 self-incrimination. In this case we're fortunate
4 enough to have body cam of almost the whole, almost
5 the whole thing, which you'll see that, one, Mr.
6 Dunham was not the driver of the car, but a car was
7 pulled over at 2:40 in the morning for a window tint
8 violation and only a window tint violation. How, we
9 will discuss how or why was that reasonable, we will
10 discuss that when the officer testifies. But
11 there's no testing done; there's no nothing else.
12 It's just pulled over for window tint violation.
13 Then there's dialogue the officer has with
14 Mr. Dunham.

15 Mr. Dunham does give a false name. We're
16 not even gonna try to hide that; it's gonna be on
17 the video. But then something very interesting
18 happens after that. The officer says, tell me what
19 your real name or I'll charge you. And there's no
20 warnings, he doesn't advise him of his rights. He
21 doesn't say he doesn't have to answer the question.
22 And he pulls him out of the car, put handcuffs on
23 him. Then, actually, for the duration of the
24 video -- now I don't think we're gonna watch the
25 whole, but for the duration of the video the officer

1 never reminds Mr. Dunham or actually the other
2 person Margaret Tobias of their rights. There's no
3 mention that they have a right to remain silent.
4 There's no mention that they have a right to an
5 attorney or any of that stuff.

6 So then Mr. Dunham is searched. The
7 contents of his pocket are put on the trunk of the
8 car. Well then, at that point the other driver is
9 searched as you'll see in the video, and the
10 contents of her purse are also put on the trunk of
11 the car. And you can see for yourself there could
12 be chances that something could have been
13 commingled, that these things could have been
14 intertwined in a way, and then those things are
15 taken and then they're tested in the drug lab and
16 then that's why we're here because it came back as
17 crack cocaine. So just keep in mind while you hear
18 the testimony, and more importantly, just pay
19 attention when you see the video itself, that there
20 are issues with how the stop was initiated.
21 Mr. Dunham was not advised of his rights, and most
22 importantly, just how everything was handled once
23 Mr. Dunham was searched and then once the driver,
24 Ms. Tobias, was searched. So again, I thank you for
25 your time and attention and we couldn't be here

1 without you so I sincerely thank you for your
2 service this week.

3 THE COURT: All right, before we start I
4 need to take up a matter with the lawyers. Let's
5 see, they have been here an hour now. Would you
6 take them to the jury room please, sir. And may I
7 remind you please, as I instructed you earlier do
8 not talk about this case, think about it, or
9 deliberate yet please.

10 (WHEREUPON, the jury was removed from the
11 courtroom at 3:32 p.m.)

12 THE COURT: We can go in my room. If we
13 have to do it on the record we'll do it.

14 (WHEREUPON, a recess was taken from the
15 proceedings.)

16 THE COURT: Are we ready?

17 MS. BEHARRY: State's ready, Your Honor.

18 MR. BRIDGES: Defense is ready.

19 (WHEREUPON, the jury was returned to the
20 courtroom at approximately 3:47 p.m., and
21 the following proceedings commenced in
22 open court.)

23 THE COURT: Proceed.

24 MR. BROWN: May it please the Court, Your
25 Honor.

SW - M. YOUNG - DIRECT

1 THE COURT: Yes, sir.

2 MS. BEHARRY: Our first witness will be
3 officer first class Micah Young.

4 THE CLERK: Place your left hand on the
5 Bible, raise your right hand. State your name.

6 THE WITNESS: Arthur Young, Micah Young.
7 WHEREUPON,

8 MICAH YOUNG,
9 having been duly sworn by the Clerk, testified
10 as follows:

11 THE CLERK: State your name for the
12 record and spell your last name please.

13 THE WITNESS: Micah Young, last name
14 spelled Y-O-U-N-G.

15 MR. BROWN: May it please the Court, Your
16 Honor.

17 THE COURT: Yes, sir.

18 **DIRECT EXAMINATION**

19 BY MR. BRIDGES:

20 Q Officer first class Micah Young?

21 A Yes, sir.

22 Q Officer, for the first starting with this, if you
23 can for these ladies and gentlemen of the jury, let
24 them know who you are. Let them know where you're
25 from, where you grew up, where you went to school,

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1 obviously what you do for a living now.

2 A Yes, sir. Hi, how are y'all guys doing this
3 afternoon right now. My name is Micah Young. I've
4 been working for the police department about,
5 probably about five years. Before I did that I did
6 two years of dispatch for the City of Sumter. Then
7 I went, when I turned 21 I did three years of law
8 enforcement for the police officers. Back in 2012 I
9 enlisted in marine corp. I'm still in reserves
10 right now, and my current rank is corporal in the
11 marine corp..

12 And then a little about myself, I grew up
13 in Sumter and I went back to Charleston for a little
14 while until I turned 18. I came back to Sumter and
15 I just worked from here ever since then.

16 Q You've been with our police department between
17 dispatch and this for the past six years; is that
18 what I heard?

19 A Yes, sir.

20 Q And what do you do with the police department?

21 A Right now I'm on patrol right now. Basically
22 what we do on patrol is we check property. We, like
23 check on businesses, go to answer like calls for
24 service, and then we also enforce laws like traffic
25 laws, regular criminal laws.

SW - M. YOUNG - DIRECT

- 1 Q You work night shifts or day shifts?
- 2 A It's on rotation so we have two months on day
- 3 shift, then we have two months on night shift.
- 4 Q What shift you on right now?
- 5 A Right now it's on c-shift or night shift working
- 6 12 hour shifts.
- 7 Q So you worked last night?
- 8 A Yes, I got off at 6:00.
- 9 Q And are you going in again in about two hours?
- 10 A Yes, I go in at 6:00.
- 11 Q You're on your time off right now?
- 12 A Yes, I am on my time off.
- 13 Q Were you working on the date of August 25th,
- 14 2017?
- 15 A Yes, sir.
- 16 Q What shift were you on?
- 17 A Night shift.
- 18 Q Okay. That's c-shifts you were talking about?
- 19 A Yes, sir.
- 20 Q And you already described what you did as a
- 21 patrol officer with Sumter Police Department. Were
- 22 you doing those duties that night?
- 23 A Yes, sir.
- 24 Q Patrolling streets?
- 25 A Yes, sir.

SW - M. YOUNG - DIRECT

1 Q Looking for infractions?

2 A Yes, sir.

3 Q Responding to calls?

4 A Yes, sir.

5 Q Was there a point in time where you had an

6 occasion to make contact with the defendant

7 Mr. Levance Dunham?

8 A Yes, sir.

9 Q And can you please for these ladies and gentlemen
10 of the jury tell me them first off, about what time
11 was it when you made that contact?

12 A It was 2:30 in the morning.

13 Q 2:30 in the morning?

14 A Yes, sir.

15 Q All right. You talk fast just like me. I'm sure
16 our court reporter is loving that, but 2:30?

17 A Yes, sir.

18 Q You were by yourself?

19 A Yes, sir.

20 Q On TV a lot of times they show officers with
21 other officers in the car. Do y'all travel in
22 single person cars?

23 A Single person cars. Usually by yourself until
24 another officer gets out there.

25 Q Slow that down, say that again please.

SW - M. YOUNG - DIRECT

1 A You're by yourself until another officer gets out
2 there to help you.

3 Q Okay. And where were you patrolling on this
4 particular night?

5 A I was on Main Street near Lauren Drive.

6 Q Okay. And how did you come in contact at around
7 2:30 in the morning on August 25th, 2017, with Mr.
8 Dunham?

9 A Yes, sir. Basically it was a traffic infraction.
10 I observed a white Nissan ---

11 MR. BRIDGES: I state my pretrial
12 objections.

13 THE COURT: Yes, sir, it's noted.

14 BY MS. BEHARRY:

15 Q Go ahead.

16 A Keep going?

17 Q Yes.

18 A I observed a white Nissan vehicle with tinted
19 windows all up-- all four tinted windows were all
20 up. I then initiated a traffic stop on that
21 vehicle. It was gonna be on Main Street and Liberty
22 Street which is in a well lit area, if everybody
23 knows the downtown area. There's where the traffic
24 stop actually happened. I made contact with the
25 driver, asked her to roll her window down 'cause I

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1 couldn't see inside the vehicle. I advised her of
2 the tint violation which is 27 percent, anything
3 lower than 27 percent. While I talked to, her name
4 was Ms. Tobias, Margaret Tobias, while I was talking
5 to Ms. Tobias I looked inside the vehicle and
6 noticed Mr. Dunham in the passenger side. I also
7 asked for his I.D., and he said he didn't have I.D.
8 He gave me the name of -- you want me to keep going?

9 Q Well, I'm gonna pause you there and I'm gonna
10 back up 'cause there's a couple of things I want to
11 address. First off you said this was on Main and
12 Liberty when this occurred?

13 A Yes, sir.

14 Q I've got to ask this, was that here in the City
15 of Sumter?

16 A Yes, sir, that was in the City of Sumter.

17 Q And that falls in the county of Sumter?

18 A Definitely does as well.

19 Q You said that you pulled him over because of the
20 tint. For these ladies and gentlemen of the jury,
21 explain, is that a traffic infraction in the State
22 of South Carolina?

23 A Yes, sir.

24 Q All right. You kind of touched on it, but what
25 is the law in South Carolina in terms of tint

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1 windows?

2 A Basically the front two windows, anything below;
3 it cannot be below 27 percent so you have to be able
4 to see inside those windows. We do have like a
5 comparison sheet so I can actually show you what
6 27 percent looks like, and then what actually is
7 illegal. And when I walked into the vehicle you
8 could not see anything inside the vehicle.

9 Q Is there also requirements that has like a
10 sticker on it to state ---

11 A Yes, sir, it also requires a sticker on the
12 bottom and they advised they didn't have it.

13 Q And when you pulled over this white Nissan, I
14 mean, was the car traveling past you?

15 A Yes, sir.

16 Q Were you able to see from that standpoint whether
17 they had a sticker or not?

18 A When they took at -- past me, like ---

19 Q Right, when it was driving past you.

20 A No, I can't -- while the vehicle was driving I
21 couldn't see.

22 Q But based on what you were observing you ---

23 A Yes.

24 Q ---suspected that it might be in violation of the
25 law?

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1 A Yes, sir.

2 Q And that's why you pulled them over?

3 A Yes, sir.

4 Q All right. The defendant, was he the driver of
5 the vehicle?

6 A No, sir, he was a passenger.

7 Q And who was the driver one more time?

8 A Margaret Tobias.

9 Q And where was he seated in the vehicle?

10 A The front passenger side.

11 Q I think now I caught back up to where you were so
12 at this point you see Levance Dunham in the
13 passenger seat. What happened next?

14 A I asked Mr. Dunham what his name was. Pretty
15 much I'm just giving him a chance, you know, to be
16 honest 'cause I already know. I said, hey, sir, do
17 you have your I.D. on you. He said, no, he doesn't
18 have I.D. so I asked him his name, his birthday. He
19 told me his name was Matthew Hampton, and I think he
20 said his birthday was -- I can't remember his
21 birthday exactly, but he said he was from out of
22 Turbeville. So from, first off, I already knew he
23 was lying because we already had prior experience
24 with Mr. Matthew Dunham, and we also had --

25 MR. BRIDGES: Objection to that, Your

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1 Honor.

2 THE COURT: Your objection, sir?

3 MR. BRIDGES: He mentioned prior
4 experience with Mr. Dunham. It's prejudicial.

5 MR. BROWN: Your Honor, we can strike that
6 part. We'll just move back on to it.

7 THE COURT: All right. Members of the
8 jury, please do not consider what was just said
9 about prior dealings, experience. Do not let
10 include, do not include that in your deliberations
11 later.

12 Proceed, sir.

13 BY MR. BROWN:

14 Q Was there information from the Sumter Police
15 Department around this time regarding Mr. Levance
16 Dunham and being on the look out for him?

17 A Yes, sir. In briefing before we even went out to
18 shift, we had a briefing and basically, and during
19 briefing tells us what happened the prior night and
20 also tells us, you know, who recently wanted and we
21 have like posters and they hand it out to us and we
22 just keep it in our cars.

23 MR. BROWN: Permission to approach the
24 witness, Your Honor.

25 THE COURT: Yes, sir.

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1 BY MR. BROWN:

2 Q Officer Young, do you recognize this document
3 right here?

4 A Yes, sir.

5 Q And I'm showing you what's been marked State's 3.
6 Is that what you were just now describing to us?

7 A Yes, sir.

8 Q And is this the wanted poster that was given to
9 y'all on Levane, Levance Dunham, on the date that
10 y'all were patrolling that day?

11 A Yes, sir.

12 MR. BROWN: All right, Your Honor, I'd
13 offer this into evidence as State's Number three.

14 MR. BRIDGES: My previous objection, Your
15 Honor.

16 THE COURT: All right. Well, let's put it
17 on the record here for today then, right now.

18 MR. BRIDGES: Just that it's prejudicial,
19 first prejudicial to my client.

20 THE COURT: All right, I'm gonna
21 respectfully overrule that.

22 Proceed, sir.

23 (WHEREUPON, State Exhibit No. 3 was
24 admitted into evidence.)
25

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1 BY MR. BROWN:

2 Q And is this the accurate representation other
3 than the black boxes that have been put at the
4 bottom at the consent of Defense and State as to
5 what you had that particular day?

6 A Yes, sir.

7 MR. BROWN: Permission to publish this to
8 the jury?

9 THE COURT: Yes, sir.

10 BY MR. BROWN:

11 Q So on August 25th of 2017 while you're
12 patrolling, before you began your patrol you were
13 given this wanted poster?

14 A Yes, sir.

15 Q Y'all were told to be on the lookout for
16 Mr. Levance Dunham?

17 A Yes, sir.

18 Q As you look into this white Nissan you see this
19 individual?

20 A Yes, sir.

21 Q That individual?

22 A Yes, sir.

23 Q And what does he say his name is?

24 A Matthew Hampton.

25 Q All right. Does he also call himself Mat

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1 Hampton?

2 A Yeah, he called Mat, yes, sir.

3 Q What did you do next?

4 A I advised him, you know, just be honest with me,
5 you know. I tried to talk to him like a casual way.
6 And I let him know, I was like, if you're gonna just
7 keep lying to me I'll just charge you for it.

8 Q Let's be clear, when you say that you would
9 charge him for it, is there a particular charge
10 under South Carolina law if you give false
11 information to law enforcement to impede their
12 investigation?

13 A Yes, sir.

14 Q Did you end up charging him with that?

15 A No, sir, I give him a break.

16 Q Did he end up ultimately telling you what his
17 name was?

18 A Yes, sir.

19 Q And what name did he give you that day?

20 MR. BRIDGES: Objection, previously stated
21 pretrial objection.

22 THE COURT: Yes, sir.

23 MR. BROWN: Your Honor, I believe Your
24 Honor has already ruled. We ask to proceed.

25 THE COURT: I have.

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- 1 BY MS. BEHARRY:
- 2 Q What name did he give you?
- 3 A Levance Dunham.
- 4 Q Is that who you knew him to be?
- 5 A Yes, sir.
- 6 Q At this point are you still alone at the location
- 7 pulling Mr. Dunham over?
- 8 A My other officer just pulled up on the scene.
- 9 Q You're talking about officer right here?
- 10 A Yes, sir.
- 11 Q And tell us, how does that work?
- 12 A Normally you're on a traffic stop by yourself at
- 13 first and then another officer signs up for it, you
- 14 know, be backup for you. And then maybe about one
- 15 to two minute gap, they'll actually come out there
- 16 and assist you with your traffic stop.
- 17 Q So by the point that you had confronted
- 18 Mr. Dunham about his actual name and by the point
- 19 that he had told you his actual name, you had
- 20 Officer Robinson already on scene?
- 21 A Yes, sir.
- 22 Q And she was there at the location out of her
- 23 vehicle as well?
- 24 A Yes, sir.
- 25 Q Is all this on body cam by the way?

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1 A Yes, sir.

2 Q And we're all going to get to watch that in just
3 a second?

4 A Yes, sir.

5 Q What did y'all do next?

6 A I went back to the rear of the vehicle, the wrap
7 sheet, ran his name through dispatch, and they
8 advised that Mr. Dunham was holding an open warrant.

9 Q Based on this, when y'all know there's an open
10 warrant on someone that y'all have there what's your
11 standard practice?

12 A We can take the person out the vehicle and at
13 that point in time we arrest the person 'cause -- we
14 have another person to actually go and get the
15 warrant and they bring it out there to us.

16 Q So y'all's goal at that point is to go and place
17 him under arrest?

18 A Yes, sir.

19 Q And is that what y'all did on this picture day?

20 A Yes, sir.

21 Q You asked Mr. Dunham to step out the passenger
22 seat?

23 A Yes, sir.

24 Q Did you observe anything as he stepped out of the
25 passenger seat?

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1 A I didn't observe anything, but my partner did.

2 Q All right, she observed something — and don't
3 say what it is — we'll let her comment on that,
4 okay?

5 A Yes, sir.

6 Q As Mr. Dunham steps out of the vehicle what do
7 y'all do next?

8 A And once he steps out the vehicle he's placed
9 under arrest. Then he's in handcuffs. He steps to
10 the back of the vehicle, and I asked him did he have
11 any drugs, weapons, anything of importance to me.
12 He advised no. I found ID in his pocket which
13 confirmed who he is, his identification is. Also
14 found crack cocaine in his pocket when I pulled
15 everything out his pocket.

16 Q Is it y'all's standard practice as y'all arrest
17 someone to search their person?

18 A Yes, sir, search incident to arrest.

19 Q And are y'all searching all pockets in and out
20 completely before you place them in your patrol car?

21 A Yes, sir, you never know what's gonna happen.

22 Q Is that what you did with Mr. Dunham on this
23 particular day?

24 A Yes, sir.

25 Q On your body cam?

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1 A Yes, sir.

2 Q Was Ms. Tobias, the person who was in the
3 driver's seat, was any of her stuff in the area as
4 y'all were searching her-- Mr. Dunham's person?

5 A No, sir. It was just Mr. Dunham out of the
6 vehicle, just his stuff.

7 Q Where was Ms. Tobias during this?

8 A She was still sitting in the vehicle. She was
9 about to get pulled out and the other officer was
10 gonna search her.

11 Q Was Officer Robinson handling Ms. Tobias?

12 A Yes, sir.

13 Q And you were handling Mr. Dunham?

14 A Yes, sir.

15 Q And you were in the back, you were searching his
16 person?

17 A Yes, sir.

18 Q All right. As you took the items out of his
19 pocket and found what you suspected to be crack
20 cocaine, did you show this to him?

21 A Yes, sir.

22 Q And did he give any response?

23 A I can't remember exactly what he said, but he
24 said, I don't know how they got in my pocket, or
25 something like that, along those lines. But I can't

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1 remember exactly what he said.

2 Q At that point did you then place him under
3 arrest?

4 A He was already under arrest, but yes, sir.

5 Q Did he end up ultimately getting charged with
6 that crack cocaine?

7 A Yes, he did get charged with crack cocaine.

8 Q Did you take the crack cocaine on to, in your
9 custody with the Sumter Police Department?

10 A Yes, sir.

11 Q Where it'd ultimately be tested by our law
12 enforcement agencies?

13 A Yes, sir.

14 MR. BROWN: Permission to approach the
15 witness?

16 THE COURT: Yes, sir.

17 (WHEREUPON, State Exhibit No. 4 was
18 marked for identification only.)

19 BY MR. BROWN:

20 Q You recognize this document right here?

21 A Yes, sir.

22 Q What are we looking at here?

23 A Basically it's a chain of custody. It's pretty
24 much everything I took from Mr. Tobias and Mr., I
25 mean Ms. Tobias and Mr. Dunham.

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1 Q All right. And on the back of this document
2 right here is there an indication where you signed
3 out any items you took over to Officer Buck with the
4 Sumter Police Department who's your evidence
5 custodian?

6 A Yes, sir.

7 Q And is that Mr. Buck right there in the back left
8 corner?

9 A Yes, sir.

10 MR. BROWN: Offer State's Number 4 into
11 evidence, Your Honor.

12 MR. BRIDGES: That's just the chain of
13 custody log?

14 MR. BROWN: Yes.

15 MR. BRIDGES: No objection.

16 THE COURT: All right, without.

17 (WHEREUPON, State Exhibit No. 4
18 was admitted into evidence and State
19 Exhibit No. 5 was marked for
20 identification only.)

21 BY MR. BROWN:

22 Q You recognize this item right here?

23 A Yes, sir.

24 Q Is this what we call Best Kit?

25 A Yes, sir.

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1 Q All right. And what's a Best Kit?

2 A A Best Kit is pretty much it analysis, analyzes
3 all your drugs, your basically drug paraphernalia
4 drugs. That's for heroine, crack cocaine,
5 marijuana, and controlled substances.

6 Q And is this your signature right here? Is that
7 being the person who sealed this envelope to be
8 turned over to Officer Buck and ultimately sheriff's
9 deputy Joe Powell?

10 A Yes, sir.

11 Q All right. And is that a matching law
12 enforcement case number 17115323, the same case
13 number as what's on this chain of custody right
14 here?

15 A Yes, sir.

16 Q All right.

17 MR. BROWN: Offer State's Number 5 into
18 evidence, Your Honor.

19 THE COURT: Yes, sir. Any objection?

20 MR. BRIDGES: No objection.

21 (WHEREUPON, State Exhibit No. 5 was
22 admitted into evidence.)

23 MR. BROWN: Permission to approach the
24 witness.

25 THE COURT: Yes, sir.

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1 BY MR. BROWN:

2 Q Officer Young, you testified earlier about that
3 you were wearing body cam, correct?

4 A Yes, sir.

5 Q And is that standard practice with the police
6 department now wear body cameras?

7 A Yes, sir.

8 Q Do you have one on right now?

9 A No. This is four times off duty so we don't have
10 it right here. Only on duty or security use it's
11 policy that you have to have your body cam.

12 Q Okay. But y'all wear them when you're on patrol
13 at night?

14 A Yes, sir.

15 Q Or during the day, whenever you're working?

16 A Yes, sir.

17 Q Were you wearing it on this particular day?

18 A Yes, sir.

19 Q And how do those work?

20 A Basically it stays on, it goes actually at least
21 a minute or two minutes back. It starts recording
22 before you start hitting the button. Once you hit
23 the button it automatically starts recording video
24 and audio and captures pretty much everything.

25 Q And the disk is already in the computer, but

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1 earlier today were you present to view that video
2 and to confirm that it's the same body cam of what
3 happened when you had contact with Mr. Levance
4 Dunham on this day?

5 A Yes, sir.

6 Q All right. And when you saw that earlier marked
7 as State's Exhibit Number 1 for I.D. at that time?

8 A Yes, sir.

9 Q And was that the same and accurate representation
10 of what occurred on that particular day?

11 A Yes, sir.

12 MR. BROWN: Your Honor, we'd offer State's
13 Number 1 into evidence.

14 MR. BRIDGES: Subject to my pretrial
15 objection.

16 THE COURT: Yes, sir, all right. It's
17 already been ruled upon. Proceed.

18 MR. BROWN: Your Honor, may we publish
19 that?

20 THE COURT: Yes, sir.

21 MR. BROWN: Permission to publish, Your
22 Honor.

23 THE COURT: Yes, sir. Thank you.

24 (State's Exhibit Number 1 was played.)

25 BY MR. BROWN:

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1 Q Is that Officer Robinson coming through right
2 there when you con-- told him about, your turn, I
3 already know who you are. It's because you have his
4 wanted poster right there?

5 A Yes, sir.

6 Q You knew who he was?

7 A Yes, sir.

8 (Playing of State's 1 continued.)

9 BY MR. BROWN:

10 Q Are you confirming right here that he is -- that
11 there is still, have a active warrant?

12 A Yes, sir, I have done -- before I pull him out
13 the vehicle I make sure I confirm.

14 Q Say that again.

15 A Before I actually pull him out the vehicle I make
16 sure dispatch confirms he does have a open,
17 outstanding warrant before I actually take him out
18 the vehicle.

19 Q And that way you're not taking people to jail who
20 ---

21 A Yes.

22 Q ---maybe the warrant's been dismissed or anything
23 like that?

24 A Yes, sir.

25 Q Do they ultimately confirm he does still have an

SW - M. YOUNG - DIRECT

1 active warrant?

2 A Yes, sir.

3 (Playing of State's 1 continued.)

4 BY MR. BROWN:

5 Q Is that where you found the crack rock?

6 A Yes, sir.

7 Q It's the same one that's there in State's Number
8 5?

9 A Yes, sir.

10 Q And at this point the driver, Ms. Tobias, is she
11 still in the vehicle?

12 A Yes, sir.

13 Q Has anything from her pockets been emptied out?

14 A No, sir.

15 Q Has there ever been any commingling of the items
16 that he had and she had on the back of that car?

17 A No, sir.

18 Q This is exactly what you just now pull out of his
19 front left pocket at that point if I saw correctly?

20 A Yes, sir.

21 Q And that's all what we just saw on your body cam?

22 A Yes, sir.

23 (Playing of State's 1 continued.)

24 BY MR. BROWN:

25 Q From this point forward is this where y'all

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1 ultimately end up taking Ms. Tobias out of the
2 vehicle and search her?

3 A Yes, sir.

4 Q And then put them in y'all's patrol car and take
5 them downtown?

6 A Yes, sir.

7 Q And the entire video is in if Defense wants to
8 see anymore, but is that ultimately the point where
9 y'all have now taken custody of the crack cocaine?

10 A Yes, sir.

11 Q That came out of his pocket?

12 A Yes, sir.

13 Q Do y'all end up doing anything with that tint
14 violation?

15 A I gave Ms. Tobias a warning ticket for it?

16 Q And was there a sticker on the window —

17 A No, sir.

18 Q —indicating that it did meet the specifications
19 of tint?

20 A No, sir.

21 Q So it was in violation of the law enough to show
22 there's a warning ticket?

23 A Yes, sir.

24 Q Kind of like if I get pulled over for going over
25 five over y'all might give me a warning ticket, you

SW - M. YOUNG - CROSS

1 might give me a speeding ticket?

2 A Correct, sir.

3 MR. BROWN: Court's indulgence.

4 THE COURT: Yes, sir.

5 BY MS. BEHARRY:

6 Q And y'all field tested this before y'all
7 ultimately end up charging him with crack cocaine?

8 A Yes, sir.

9 Q And did it field test positive?

10 A Yes, sir.

11 Q And of course, that's not proof positive it was
12 crack cocaine. We have a chemist who tests that.

13 A That's correct.

14 Q But it did field test positive for crack cocaine?

15 A Yes, sir.

16 Q Do you also find crack cocaine on Margaret
17 Tobias?

18 A Yes, sir, in her purse.

19 Q So each of them had it on their own separate
20 persons?

21 A Yes, sir.

22 Q And hers field tested positive as well?

23 A As well, sir.

24 Q All right. Please answer any questions the
25 Defense has.

SW - M. YOUNG - CROSS

1 THE COURT: Mr. Bridges.

2 MR. BRIDGES: Thank you, Your Honor.

3 **CROSS-EXAMINATION**

4 BY MR. BRIDGES:

5 Q Officer Young.

6 A Mr. Bridges.

7 Q So it was about 2:30, 2:40 that night when this
8 traffic stop was made?

9 A Yes, sir.

10 Q And as you testified earlier, the reason was a
11 tint violation?

12 A Yes, sir.

13 Q Now you said, you know, below 27 percent that's
14 the law. It's below 27 percent?

15 A Yes, sir.

16 Q You said, you mentioned something about sometimes
17 there's a kit you can use to test that?

18 A You have to buy that out of your own pocket; but
19 yes, sir, there is a kit.

20 Q So you ---

21 A It's actually a tint meter.

22 Q But you didn't have one on you that day?

23 A No, sir, I just recognize it, the tint.

24 Q But you didn't test the windows that night with
25 any kit or anything like that?

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1 A No, sir.

2 Q So it was just your observation that it was below
3 the 27 percent?

4 A Yes, sir.

5 Q And you can tell that in the, at that time of
6 night?

7 A Yes, sir.

8 Q So, pull the car over, Ms. Tobias was the driver,
9 you see Mr. Dunham in there.

10 A Yes, sir.

11 Q And as you testified before, you knew who he was,
12 you knew his name as Levance Dunham?

13 A Yes, sir.

14 Q Why did you ask him any questions at all if you
15 already knew who he was and you knew he had a
16 warrant?

17 A I give people a chance, I mean, the opportunity
18 to tell the truth.

19 Q And you, and when he gave you the original name
20 you knew it was false because you knew, you knew who
21 he was already?

22 A Yes, sir.

23 Q Okay. And the video shows that you said, tell me
24 your real name or I'll charge you.

25 A Yes, sir, chargeable offense.

SW - M. YOUNG - CROSS

1 Q Was he free to go at that point?

2 A No, sir.

3 Q And if he would have not answered you would have
4 charged him?

5 A Say it again. If he would have not answered
6 would have charged him?

7 Q Yeah. If he didn't give an answer at all to that
8 question.

9 A Yes, sir.

10 Q And then using that information you verified he
11 has a warrant?

12 A Yes, sir.

13 Q And you go back a couple of times to verify the
14 spelling of his name. Why did you do that?

15 A His name is kind of unique. It's like, Levance
16 Dunham. I don't know how to pronounce it correctly,
17 but it's kind of awkward.

18 Q And the same thing with his birthday. I think
19 you went back to verify his birthday as well.

20 A Yes, sir.

21 Q So then it's confirmed he has a warrant, he's
22 taken out of the car, and he's arrested at this
23 point?

24 A Yes, sir.

25 Q Okay. Did you tell him he was arrested at that

SW - M. YOUNG - CROSS

1 point?

2 A Yes, sir. We let him know that, sir, you have a
3 warrant for forgery.

4 Q Then you searched him and you find the alleged
5 crack?

6 A Yes, sir.

7 Q And you put it on the back of the car?

8 A Yes, sir.

9 Q Okay. And then I believe at some point after
10 that the rest of the car is searched, correct?

11 A Yes, sir.

12 Q And you actually, I think it's you who goes in
13 and gets Ms. Tobia's purse?

14 A Yes, sir.

15 Q I'm gonna go to about 20 minutes into this video
16 and then we can describe what happened there.

17 (Playing of State's Exhibit 1.)

18 BY MR. BRIDGES:

19 Q I'm gonna pause it real quick. So we saw
20 briefly, is Ms. Tobias' purse down on the back of
21 the car?

22 A Yes, sir, on the right-hand side.

23 Q Okay. Then the stuff you gathered from Mr.
24 Dunham is on the left-hand side?

25 A Yes, sir.

SW - M. YOUNG - CROSS

1 Q Is Ms. Tobias' ID on the left-hand side as well?

2 A Yes, sir. The IDs are, and the registration on
3 the left-hand side where I began. Mr. Dunham's
4 stuff is on the left-hand side, like his wallet and
5 everything that came out his pockets are right
6 there. They're all, her purse and her other stuff
7 on the right-hand side.

8 Q Now I'm just going to play the video.

9 (Playing of State's Exhibit No. 1 continued.)

10 BY MR. BRIDGES:

11 Q So what were you doing there? Were you emptying
12 the contents of the purse?

13 A Correct, sir.

14 Q And so you found crack in her purse?

15 A Yes, sir.

16 Q So how did you separate, how did you keep things
17 separate when you went into, went you ultimately
18 turned it over?

19 A Into evidence?

20 Q Yes, sir.

21 A It would be by different weights. Mr. Dunham has
22 the substantially larger amount of crack cocaine and
23 I documented it in the report. It said, you know,
24 how much it actually weighed. And then with Tobias
25 it actually said how much it actually weighed.

SW - M. YOUNG - CROSS

1 Q But how, would they put it in different
2 containers or how is that maintained?

3 A With the Best Kit, both of them have to go in the
4 same thing to get tested.

5 Q So they both went in the same container?

6 A With the Best Kit, yes, sir, right there.

7 Q Okay. And were they, was this alleged crack, was
8 it in plastic bags or what was it in? Or was it
9 just ---

10 A When I started, like, taking it out his pocket?

11 Q Yeah. When you recovered it from Ms. Tobias and
12 from him.

13 A No, there was no plastic bag or anything.

14 Q Did you have to put it in any kind of container,
15 put it in a Best kit?

16 A Yes, sir.

17 Q So but they would put together in the Best Kit?

18 A To get it tested, yes, sir.

19 Q And you emptied out the contents of her purse on
20 the back of the car?

21 A Yes, sir.

22 Q Okay. And you said you did a field test?

23 A Yes, sir. On the back of the, like, -- if you
24 hit play, move my hand out the way.

25 (Playing of State's Exhibit No. 1 continued.)

SW - M. YOUNG - REDIRECT

1 THE WITNESS: When my arm moves you'll see
2 like a narc kit. This is called, like, narc two.
3 And that's pretty much what the patrol officers
4 have, is like a wipe. So if you wipe it it'll turn
5 blue, and it's just like a cocaine substance. So
6 that's just a field test versus when you have to
7 actually turn it in to actually get the real test
8 from the chemist.

9 BY MR. BRIDGES:

10 Q Okay, so that's not ---

11 A Yes, sir, that's just something on the field that
12 we use.

13 Q Okay. And then you put both of these suspected
14 pieces of crack together in the Best Kit and send it
15 to chemist?

16 A Yes, sir. We put the weight amount. It's two
17 different weights.

18 Q Okay. I have no further questions, Officer
19 Young.

20 A Yes, sir.

21 THE COURT: Mr. Brown.

22 **REDIRECT EXAMINATION**

23 BY MR. BROWN:

24 Q So you found a crack rock on Margaret Tobias as
25 well?

SW - M. YOUNG - REDIRECT

- 1 A Yes, sir.
- 2 Q And that was pulled from her purse, correct?
- 3 A Yes, sir.
- 4 Q Just one?
- 5 A I believe so.
- 6 Q So there's one rock from Margaret and one rock
- 7 from Mr. Dunham, correct?
- 8 A Correct, sir.
- 9 Q And y'all put those two rocks in that bag, right?
- 10 A Yes, sir.
- 11 Q Those are the only two things that went in the
- 12 Best Kit, correct?
- 13 A That's correct.
- 14 Q And those two were the things that were sent off
- 15 to our chemist to actually test, for Mr. Joe Powell
- 16 to test, correct?
- 17 A Yes, sir.
- 18 Q So if both those came back positive as crack
- 19 cocaine we know what he had in his pocket was
- 20 actually crack cocaine?
- 21 A Yes, sir.
- 22 Q No further questions.

23 THE COURT: Mr. Bridges.

24 MR. BRIDGES: Very brief.

25 **RECROSS-EXAMINATION**

SW - M. YOUNG - RECROSS

1 BY MR. BRIDGES:

2 Q S, I believe a paraphernalia ticket was issued to
3 Ms. Tobias?

4 A Yes, sir.

5 Q Mr. Dunham didn't get a paraphernalia ticket,
6 correct?

7 A No, sir.

8 Q No further questions.

9 THE COURT: Mr. Brown.

10 MR. BROWN: Nothing further, Your Honor.

11 THE COURT: All right. You may be
12 excused.

13 MR. BROWN: We would ask this officer be
14 excused so that he may get an hour nap before ---

15 THE COURT: All right, sir, thank you for
16 your time.

17 THE WITNESS: Yes, sir.

18 THE COURT: All right, let me speak to
19 y'all up here please.

20 (WHEREUPON, counsel approached the
21 Bench for an off-the-record discussion.)

22 THE COURT: Proceed, ma'am.

23 MS. BEHARRY: Your Honor, the next State
24 witness is Officer Verna Young, I mean Robertson,
25 I'm sorry.

SW - V. ROBERTSON - DIRECT

1 THE CLERK: Place your left hand on the
2 Bible, raise your right please. State your name.

3 THE WITNESS: Verna Robertson.

4 WHEREUPON,

5 **VERNA ROBERTSON,**

6 having been duly sworn by the Clerk, testified
7 as follows:

8 THE CLERK: Thank you much. Step around.
9 State your name for the record and spell your last
10 name please.

11 THE WITNESS: Verna Robertson,
12 R-O-B-E-R-T-S-O-N.

13 THE COURT: All right, ma'am.

14 **DIRECT EXAMINATION**

15 BY MS. BEHARRY:

16 Q Officer Robertson, I know that you're on the same
17 shift with Officer Young, correct?

18 A Yes, ma'am.

19 Q All right. Tell us briefly a little bit about
20 yourself, where you work and what do you do.

21 A My name is Verna Robertson. I'm originally from
22 Richbourg. I moved back to Sumter in 2007, and I've
23 been working in law enforcement since 2009 here in
24 Sumter.

25 Q Okay. On August 25th, 2017, the date of this

SW - V. ROBERTSON - DIRECT

1 incident, were you on patrol as part of your duties
2 as a law enforcement officer?

3 A Yes, I was.

4 Q For the City of Sumter?

5 A For the City of Sumter.

6 Q Okay.

7 A Sumter County.

8 Q On that night in question, let's back up, did you
9 receive the same briefing that Officer Young got
10 that day?

11 A Yes, we did.

12 Q Was that the same briefing also where they had
13 the wanted flyer that the jury just saw that was
14 marked as State's Exhibit Number 3?

15 A Yes, that was given at the beginning of shift by
16 the detective that come in through the pass-ons.

17 Q And did you also recognize Mr. Dunham as well?

18 A Yes, I did.

19 Q And is he the same person sitting at the
20 courtroom here today?

21 A Yes, he is.

22 Q Okay. When you pulled Mr. Dunham out of the car
23 and he was placed under arrest, what else happened?
24 Explain to us what happened after that.

25 A When Mr. Dunham was removed from the vehicle and

SW - V. ROBERTSON - DIRECT

1 was being cuffed he was being advised that he had an
2 open warrant for forgery. In the floorboard of the
3 car was ---

4 MR. BRIDGES: State my previous objection.

5 THE COURT: Yes, sir, noted.

6 BY MS. BEHARRY:

7 Q Please answer the question. Continue.

8 A In the floorboard of the car was a crack pipe.

9 Mr. Dunham was handcuffed and Officer Young
10 proceeded to pat him down while I stood by and kept
11 eye on the remainder of the vehicle as well as
12 Tobias as he went forward with Mr. Dunham.

13 Q Okay. Were you the one that searched Ms. Tobias?

14 A Yes, I searched Ms. Tobias.

15 Q When you searched her what did you find?

16 A On Ms. Tobias, in her bra was a crack pipe that
17 she had concealed.

18 Q Okay. And when you searched her and removed --
19 did you, were you the person that took the purse
20 from her?

21 A I don't recall the purse, taking the purse from
22 her, but I believe the purse was sitting in the seat
23 of the car.

24 Q Okay.

25 A And I don't know whether it was when Young began

SW - V. ROBERTSON - CROSS

1 search of the car because it happened a little over
2 a year ago.

3 Q Right.

4 A The purse was searched. In her purse, too, was
5 crack cocaine, suspected crack cocaine.

6 Q Did you at any point mix the two defendants
7 information, did you at any point mix the contents
8 of her purse and her stuff with his stuff at any
9 time?

10 A No, ma'am. Mr. Dunham was placed in the back of
11 the patrol vehicle when Ms. Tobias was taken out of
12 the vehicle, out of the car, and they were on
13 separate sides of the vehicle.

14 Q Officer Robertson, thank you so much for your
15 time here today. Please answer any questions that
16 Defense counsel may have.

17 THE COURT: Mr. Bridges.

18 MR. BRIDGES: Thank you, Your Honor.

19 **CROSS-EXAMINATION**

20 BY MR. BRIDGES:

21 Q Good afternoon, Officer Robertson.

22 A Good afternoon.

23 Q Did you get to the scene because Mr. Young, did
24 he call you to go to the scene, Officer Young?

25 A No. It's protocol that if an officer is on a

SW - V. ROBERTSON - CROSS

1 traffic stop, if there's a backup officer that
2 respond to the scene and stay there for officer
3 safety until otherwise notified by the officer, the
4 primary officer.

5 Q Do did you notice that Officer Young was at a
6 traffic stop and a vehicle ---

7 A I was listening to the radio. I was actually
8 patrolling that area as well.

9 Q Okay. Did you -- I saw on the video you pulled
10 Mr. Dunham out of the car. Did you actually search
11 him or have anything to do with that?

12 A I did not search Mr. Dunham. Usually, if there's
13 a male or female on scene we usually let the female
14 search the female and the male search the male, and
15 that's more for a comfort and to keep other issues
16 that could later occur.

17 Q I think also on the video it was Officer Young
18 that had the purse when he emptied the contents of
19 the purse, correct?

20 A I don't recall exactly. I didn't look at the
21 video; I'm just going on memory.

22 Q But you don't recall taking Ms. Tobias' purse and
23 looking in it or anything like that?

24 A I believe at one point I did go through
25 Ms. Tobias' stuff too 'cause she had other items in

SW - V. ROBERTSON - REDIRECT

1 the vehicle. She was being evasive about what was
2 actually going on.

3 Q But you did not take the alleged drug samples,
4 though, in the Best Kit, correct?

5 A I did not do anything with the Best Kit.

6 Q And you did not -- and you didn't see the video
7 but. From the -- it doesn't look like you had any
8 interaction with Mr. Dunham where you spoke with him
9 or he spoke to you?

10 A I was actually having a conversation with Mr.
11 Dunham while Young was still questioning Ms. Tobias.
12 My body camera, I think, was not pulled --

13 Q So that, that stuff is not on the body cam.

14 A Okay.

15 MR. BRIDGES: No further questions.

16 THE COURT: Ms. Beharry.

17 MS. BEHARRY: Your Honor, may I approach
18 the witness please?

19 THE COURT: Yes, ma'am.

20 (WHEREUPON, State Exhibit No. 6 was
21 marked for identification only.)

22 **REDIRECT EXAMINATION**

23 BY MS. BEHARRY:

24 Q I'm handing you what has been premarked for
25 State's Exhibit Number 6.

SW - V. ROBERTSON - RECROSS

1 MS. BEHARRY: I'm gonna go ahead and open
2 it up, Your Honor.

3 THE COURT: Ma'am?

4 MS. BEHARRY: I'm gonna go ahead and open
5 it up so she can look at it.

6 (State's Exhibit No. 6 was opened by Ms. Beharry.)

7 MR. BROWN: May I approach, counselor.

8 (Pause.)

9 BY MS. BEHARRY:

10 Q Do you recognize what those are?

11 A These are what we call crack stems. They're
12 glass pipes that usually have some kind of metal
13 push down in the ends.

14 Q And if you can, can you show us which one you
15 found on the floor, which one of those if you can.

16 A I really can't say which one at this point
17 because it's been a while.

18 Q Okay, and that's fair. But those crack pipes
19 were the ones that you found at the scene either on
20 Ms. Tobias or on the floor ---

21 A One was on Ms. Tobias and the other one was on
22 Mr. Dunham. If I would guess, the jagged one wasn't
23 in her bra.

24 Q All right.

25 MS. BEHARRY: All right. No further

SW - V. ROBERTSON - RECROSS

1 questions, Your Honor. Please answer any questions
2 that Defense counsel may have.

3 Do you want to look at these, Jason?

4 MR. BRIDGES: That's fine. I do have some

5 —

6 MS. BEHARRY: Questions?

7 MR. BRIDGES: Yeah, some questions.
8 followup.

9 **RECROSS-EXAMINATION**

10 BY MR. BRIDGES:

11 Q So one of these pipes was recovered from Mr.
12 Dunham?

13 A Yes.

14 Q He was not charged with paraphernalia, though,
15 correct?

16 A Mr. Dunham was not charged with paraphernalia.
17 But there was a crack pipe removed from the
18 passenger side of the vehicle.

19 Q But why was he not charged?

20 A Officer discretion. He was going to jail on open
21 warrants anyway. I'm assuming the officer was being
22 lenient, same as he was towards Tobias by not
23 charging her with the tint and giving her a warning.
24 Mr. Dunham was headed in jail on warrants so he
25 probably more than likely, like we always do, we

1 take the bigger charge.

2 Q No further questions.

3 THE COURT: Ms. Beharry.

4 MS. BEHARRY: None further, Your Honor.

5 THE COURT: May she be excused?

6 MR. BRIDGES: Yes, Your Honor.

7 MR. BROWN: Your Honor, may we approach.

8 THE COURT: Yes, sir.

9 (WHEREUPON, counsel approached the
10 Bench for an off-the-record discussion.)

11 THE COURT: Proceed, ma'am.

12 MR. BROWN: Officer Buck.

13 THE CLERK: Place your left hand on the
14 Bible, raise your right hand. State your name.

15 WHEREUPON,

16 **DANIEL BUCK,**

17 having been duly sworn by the Clerk, testified
18 as follows:

19 THE CLERK: Step around, Officer. State
20 your name for the record and spell your last name
21 please.

22 THE WITNESS: Daniel Buck, B-U-C-K.

23 MR. BROWN: May it please the Court.

24 THE COURT: Yes, sir.

25 **DIRECT EXAMINATION**

1 BY MR. BROWN:

2 Q Is it Investigator Buck?

3 A No, Corporal.

4 Q Corporal, and my apologies. Who are you employed
5 with?

6 A The Sumter Police Department.

7 Q What is your job with Sumter Police Department?

8 A At Sumter Police Department I take care of
9 evidence, and I've been doing so for the past
10 four-and-a-half years.

11 Q So when you say take care of evidence, tell these
12 ladies and gentlemen of the jury what that means.

13 A Well, basically what that means is when the
14 officers on patrol collect evidence they put it in a
15 locker where it's secured. The only two people that
16 have a key are myself and the other evidence
17 custodian I work with.

18 Q What's that person's name?

19 A James Alsbrook.

20 Q Okay, go ahead.

21 A So, since we don't work, we're not there all the
22 time, these lockers are available at night and
23 whenever they have evidence to turn in. We come in
24 in the morning. We take the evidence out of the
25 lockers. We log it into our computer system, and we

1 store it or take it to any place where it needs to
2 be tested or looked at or turned in to the lab for
3 fingerprints or -- it's actually a much busier place
4 than it's portrayed on TV.

5 Q TV doesn't do y'all justice?

6 A No.

7 Q Were you working back in September of 2017 as
8 evidence custodian?

9 A Yes, sir.

10 Q And did you come in, actually in August 25th, did
11 you come in either that next morning or at some
12 point and receive evidence pertaining to the case
13 that we've been discussing today?

14 A Yes, I believe that was a Friday so I would have
15 came in on Monday morning. It would have sat in
16 lockup in a locker all weekend.

17 Q And what's the protocol in terms of how officers
18 get that to you? They just, the officer
19 individually puts them into --

20 A Yes.

21 Q --the locker?

22 A It's the officer's responsibility to put it into
23 the locker.

24 Q All right.

25 MR. BROWN: Permission to approach the

1 witness?

2 THE COURT: Yes, sir.

3 BY MR. BRIDGES:

4 Q And I'm approaching with State's 4 and 5 which
5 are already in evidence.

6 MR. BRIDGES: That's correct.

7 BY MR. BROWN:

8 Q What are we looking at right here?

9 A It's a chain of custody that was turned in with
10 this piece of evidence.

11 Q All right. That's, State's Number 4 is chain of
12 custody. State's Number 5 is the piece of evidence?

13 A Correct.

14 Q All right. And ---

15 A Actually that's number 3.

16 Q All right. So item number 3 is the Best Kit. Do
17 y'all, how do y'all log who handles it when and why
18 do y'all do this?

19 A Kept track of on the back of the form. So that
20 Monday when it came in, when I took it out of the
21 locker I signed the back of the form.

22 Q So we have two columns right here and one is
23 titled relinquished by and one is entitled received
24 by. On August 25th, 2017, is there a signature
25 saying Officer M. Young relinquished this item?

1 A Yes.

2 Q And do you have a receipt by a column where your
3 name is right there?

4 A That is my name.

5 Q All right. And a couple of days later on
6 August 28th do we have where you relinquished it to
7 someone else?

8 A Yes.

9 Q And who did you relinquish that to?

10 A Joe Powell.

11 Q All right. And that's all of this that we have
12 right here, that's this same stuff, right?

13 A Correct.

14 Q Is that your signature right there?

15 A No.

16 Q Whose signature?

17 A Micah Young's.

18 Q Okay.

19 A This inside package of the Best Kit is sealed by
20 the officer.

21 Q Okay.

22 A So once it stays sealed until it's taken to Mr.
23 Powell.

24 Q Now when y'all say sealed, are y'all talking
25 sealed like a Ziploc or do y'all have special ---

1 A You can see this red tape across the top.

2 Q Uh-huh.

3 A It's a tamper proof tape that if it's opened it
4 would be evident. If it was open when he gets it,
5 it would be evident that it had been opened.

6 Q And he would have made notes about that?

7 A Yes.

8 Q And he could have answered questions about that
9 later?

10 A Yes.

11 Q So you turned this item, item number 3 on this,
12 over to Joe Powell on August 28th?

13 A Correct.

14 Q And did you receive that back where Joe Powell
15 signed it back to you on September 5th?

16 A September 5th, yes.

17 Q All right. And what's this last little column
18 right there?

19 A This last little column is where we returned a
20 phone with item number 2, and we returned it to
21 Mr. Dunham.

22 Q Mr. Dunham, all right. So item number 2 has
23 nothing to do with the drug case specifically, it
24 just deals with, there was a phone that was taken in
25 evidence ---

SW - D. BUCK - CROSS

1 A Yes.

2 Q ---and y'all returned it to his person. But
3 that's your signature here that this stating your
4 chain of custody except for when you took it to Joe
5 Powell ---

6 A Correct.

7 Q ---and ultimately until you brought it here in
8 this courtroom?

9 A Correct.

10 Q All right, thank you. No further questions.
11 Please answer any questions by Mr. Bridges.

12 THE COURT: Mr. Bridges.

13 MR. BRIDGES: Just very briefly.

14 **CROSS-EXAMINATION**

15 BY MR. BRIDGES:

16 Q So you obtained, the evidence was from Officer
17 Young, the Best Kit, he placed that into the
18 evidence room?

19 A He places it into a locker. We have, at the
20 time -- well, we still do -- have very many, a bunch
21 of small lockers they take, you know, when the
22 officer comes in they place their evidence in a
23 small locker and secure it. Back then it was a key
24 lock. Now it's a different type of lock, but that
25 is the only evidence that goes in that locker. They

SW - D. BUCK - CROSS

1 lock it. The only people that can open it up are
2 the two evidence custodians.

3 Q And that Best Kit was only, it was only Officer
4 Young who had handled it when it got to you?

5 A I don't know.

6 Q Okay.

7 A So it's, you know, I, I don't see Officer Young
8 directly. It comes out of the locker to me. So he
9 places it in a locker on Friday, and I come in on
10 Monday and take it out of the locker.

11 Q So as far as you know he's the only one, he's the
12 only that placed it in there. He'd be the only one
13 who have access to it except for you?

14 A That's correct.

15 Q And then you ---

16 A Well, he wouldn't, once he places it in the
17 locker he no longer has access to it.

18 Q So only you have access to it ---

19 A Correct.

20 Q ---as far as other evidence is concerned. You
21 gave it to the chemist Joe Powell after that?

22 A Yes.

23 Q And there was nobody else who was involved as far
24 as, you know ---

25 A Only the other evidence custodian even has

SW - D. BUCK - CROSS

1 access, and that's it.

2 Q All right, thank you. No further questions.

3 THE COURT: Mr. Brown.

4 MR. BROWN: Nothing further, Your Honor.

5 THE COURT: Thank you, sir. You may be
6 excused.

7 MR. BROWN: Your Honor, the last witness
8 will take beyond 15 minutes so we'll continue in the
9 morning.

10 THE COURT: All right.

11 Members of the jury, I told you you'd be
12 out of here by five, you will be. You're now
13 released to go home. Be back in the morning at
14 9:30. Does that suit y'all?

15 MR. BROWN: Yes, sir, Your Honor.

16 MS. BEHARRY: Yes, sir.

17 THE COURT: 9:30. Do not discuss this
18 case among yourselves or with anyone else at any
19 time, and we'll see you at 9:30 in the morning.
20 Thank y'all.

21 (WHEREUPON, the jury was removed from the
22 courtroom at 4:44 p.m.)

23 THE COURT: All right, 9:30. Thank y'all
24 so much.

25 MR. BROWN: Your Honor, before we leave,

SW - D. BUCK - CROSS

1 one other thing.

2 THE COURT: Yes, sir.

3 MR. BROWN: Your Honor, we need to address
4 this on the record. At a point in time where the
5 case is called to trial a defendant's bond is no
6 longer available. It's up to Your Honor to
7 determine whether or not he's able to remain out on
8 his own recognizance or whether or not he's to be
9 taken into custody. Your Honor, at this point
10 obviously our only big concern is that, you know,
11 most of the case has already been tried; and we
12 leave it to Your Honor's discretion, but we have
13 presented most of our case. If he doesn't show up
14 tomorrow, that certainly can raise a concern about,
15 not necessarily going forward, but how that might
16 play in front of the jury for either side.

17 THE COURT: Mr. Bridges, what do you
18 think?

19 MR. BRIDGES: Mr. Dunham has attended
20 court every time I've asked him to. I told him, you
21 know, to be here tomorrow at 9. He hasn't given me
22 any reason to think he won't come. He understands
23 the case will continue in his absence if he doesn't
24 come. I don't think there's any reason he needs to
25 go into custody.

SW - J. POWELL - DIRECT

1 THE COURT: You understand, Mr. Dunham?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right, sir, we'll see you
4 in the morning at 9:30.

5 THE DEFENDANT: All right. Judge, I can't
6 leave my wife out there. My wife, she sick too.

7 (Court adjourned and resumed on July 27, 2018, at
8 9:44 a.m.)

9 (WHEREUPON, State Exhibits No. 7 through 9
10 marked for identification only.)

11 THE COURT: Folks, anything before we
12 bring the jury in?

13 MS. BEHARRY: None from the State, Your
14 Honor.

15 THE COURT: All right.

16 MR. BRIDGES: None from Defense, Your
17 Honor.

18 (WHEREUPON, the jury was returned to the
19 courtroom at approximately 9:44 a.m., and the
20 following proceedings commenced in open court.)

21 THE COURT: Ms. Beharry, are we ready,
22 ma'am?

23 MS. BEHARRY: Yes, Your Honor.

24 THE COURT: All right, proceed please.

25 MS. BEHARRY: Your Honor, the State would

SW - J. POWELL - DIRECT

1 like to call Mr. Joe Powell to the stand please.

2 THE CLERK: Place your left hand on the
3 Bible, raise your right. State your name.

4 THE WITNESS: Joseph Powell.

5 WHEREUPON,

6 **JOSEPH POWELL,**

7 having been duly sworn by the Clerk, testified
8 as follows:

9 THE CLERK: Thank you much, sir. Come
10 around. State your name for the record and spell
11 your last name please.

12 THE WITNESS: My name is Joseph D. Powell,
13 P-O-W-E-L-L.

14 **DIRECT EXAMINATION**

15 BY MS. BEHARRY:

16 Q Good morning, Mr. Powell.

17 A Good morning.

18 Q I'm standing back here so we can include the jury
19 in our conversation this morning and I don't get --
20 'cause I speak very softly sometimes. Where do you
21 work, Mr. Powell?

22 A I'm currently employed at the Sumter County
23 Sheriff's Office in the drug analysis laboratory
24 where I perform both drug analysis as well as arson
25 analysis.

SW - J. POWELL - DIRECT

1 Q How long have you been doing this?

2 A Well, in total a little over 34 years.

3 Q Okay. Give the jury about your background, your
4 educational background, your expertise, your
5 training, just explain that to the jury please.

6 A Yes, ma'am. I originally received my bachelor's
7 of science, or bachelor of chemistry degree, from
8 the University of Mississippi. After completing my
9 undergraduate studies I came to the University of
10 South Carolina to work on my PhD, but due to family
11 issues that had come up I had to set that aside. I
12 became employed at the South Carolina Law
13 Enforcement Division where I started as a drug
14 chemist, and I worked in that section or division
15 for a little over ten years. In the process I was
16 allowed the privilege of developing methods used for
17 comparison for paints and explosives and other
18 things of what's called trace evidence. I, when we
19 formed the trace evidence section at SLED I moved
20 there and within a year became the
21 manager/supervisor of that section. I worked there
22 until my retirement at 27 years of service and
23 enjoyed a wonderful time at home for a while, and my
24 wife thought it'd be a wonderful idea that I go back
25 to work for some reason. So, I'd sit down there,

SW - J. POWELL - DIRECT

1 there was an opening here at Sumter and I took the
2 job and I've been working at Sumter now for six
3 years.

4 Q All right, sir. Have you ever -- and what is
5 your current title?

6 A My current title is just a chemist.

7 Q Just a chemist, that's very humble to say just
8 chemist. Have you ever been qualified as an expert
9 in court before?

10 A Yes, ma'am. I have been qualified in both
11 federal, state, local, and magisterial court in
12 many, in many areas, a little over 300 times in
13 trace evidence and also 300 or plus in drug
14 evidence. I've quit counting that I've been
15 qualified so many times.

16 Q Okay. And the drug cases that you were qualified
17 in before, is it just, is it like this one?

18 A Yes.

19 Q Drug cases?

20 A In other words, it's -- all of the drug cases
21 that I've been qualified in, I've been qualified in
22 all levels of the court system in various types of
23 drug analysis.

24 Q Okay. And were you ever not qualified as an
25 expert?

SW - J. POWELL - DIRECT

1 A No, ma'am, I have never failed to be qualified.

2 Q Okay.

3 MS. BEHARRY: Your Honor, the State would
4 move to admit his testimony and to qualify Mr. Joe
5 Powell as an expert for this.

6 THE COURT: Mr. Bridges?

7 MR. BRIDGES: No objection.

8 THE COURT: All right, without objection
9 so qualified.

10 MS. BEHARRY: All right. Thanks, Your
11 Honor.

12 BY MS. BEHARRY:

13 Q Did you perform drug analysis for this case?

14 A Yes, I did.

15 Q Okay.

16 MS. BEHARRY: May I approach the witness,
17 Your Honor?

18 THE COURT: Yes, ma'am.

19 BY MS. BEHARRY:

20 Q I'm handing you what has been marked and admitted
21 into State's, into evidence as State's Exhibit
22 Number 5, and also the chain of custody. Explain
23 your role in the chain of custody and how you came
24 into possession of this and what did you do with it.

25 A Yes. What's listed as State's Exhibit Number 4

SW - J. POWELL - DIRECT

1 is a evidence inventory sheet that came into my
2 presence being presented by Dan Buck who brought the
3 evidence to me. On the back is where I would sign
4 it taking it from him. I received it on August
5 the 28th of 2017, and then the following section
6 shows I returned it back to him after completing my
7 analysis on September the 5th of 2017.

8 Q Okay, thank you. I'm handing you what has been
9 marked and admitted into evidence as State's Exhibit
10 Number 5. You recognize what I'm showing you here?

11 A Yes. State's Exhibit Number 5 is going to be a
12 plastic pouch which contains within it what is
13 called a Best Kit. The Best Kit is nothing more
14 than a method of being able to take drug evidence to
15 be able to seal it and then be able to carry it in
16 that for me to analyze it and then re-seal back up.
17 It bears both a number I generated, a L number, as
18 well as the number for the county and the officer
19 who sealed the Best Kit.

20 Q Okay. And when you received it was it sealed?

21 A Yes, it was.

22 Q Okay. Did you break the seal and test it?

23 A I actually cut the other side of the envelope,
24 removed the contents, ran analysis of it, and then
25 re-sealed it back up and then sealed that inside of

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1 the covering plastic pouch you have here.

2 Q Okay.

3 MS. BEHARRY: Your Honor, we ask that we
4 be able to open the Best Kit right now in court,
5 Your Honor.

6 BY MS. BEHARRY:

7 Q Can you go ahead and open it please.

8 A Yes, ma'am.

9 Q Thanks.

10 A This is what is called the Best Kit. It is
11 nothing but a plastic container which has in it two
12 plastic bags, one listed as Dunham and the other one
13 listed as Tobias.

14 Q Can you go ahead and open it and show them so
15 they can see what you're talking about please.

16 A Sure. This is a small plastic bag which contains
17 my number 3-B. Inside it is some small white
18 material which is going to be what I analyzed, or
19 what was sent to me. There's also a second envelope
20 which bears the name Tobias. It also contains white
21 material that I analyzed.

22 Q Okay. When you analyzed those two plastic bags
23 what were the results?

24 A The results was going to be what's called base
25 cocaine or crack. Crack is a euphemism for how it

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1 sounds when you're actually smoking it. The typical
2 terminology would be that it is cocaine base.

3 Q Okay. And when you finished testing it did you
4 re-seal it and put it back in the bag?

5 A Yes. I took both of the plastic bags. I sit
6 down here and I placed them back into the Best Kit
7 bag, sealed it, initial and dated it; then took that
8 and placed it into the covering plastic pouch and
9 dated it and put my initials on it also.

10 Q And did you take it back to the evidence room?

11 A Yes. Yes, I actually have an evidence storage
12 area where I have access to and one other person has
13 access to, but it's only stored there in a sealed
14 condition. I kept it there until it was ready to be
15 picked up and then I turned it back over to Sumter
16 City.

17 Q Okay.

18 MS. BEHARRY: May I approach the witness
19 one more time?

20 THE COURT: Yes, ma'am.

21 MS. BEHARRY: Thank you, Your Honor.

22 BY MS. BEHARRY:

23 Q I'm handing you what has been marked for State's
24 exhibit just for identification only, Exhibits
25 Number 8, Number 7, and Number 9. Do you recognize

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1 what I'm showing you?

2 A Yes. This is a copy of State's Exhibit 8,
3 State's Exhibit 7, and State's Exhibit Number 9 are
4 going to be the individual sheets of my report, a
5 copy of my report if you will.

6 Q And that's ---

7 A Which reflects accurately what I have reported as
8 for the results in this case.

9 Q Okay.

10 MS. BEHARRY: Your Honor, the State moves
11 to admit the drug analysis report as State's Exhibit
12 Number 7, 8, and 9. I've shown it to defense
13 counsel previously.

14 THE COURT: Mr. Bridges, any objection?

15 MR. BRIDGES: No objections, Your Honor.

16 THE COURT: All right.

17 (WHEREUPON, State Exhibits Nos.
18 7, 8, and 9 were admitted into evidence.)

19 MS. BEHARRY: Your Honor, and just for
20 preliminary, we'd like to move to admit the crack
21 pipes into evidence, State's Exhibit 6, just...

22 THE COURT: Mr. Bridges.

23 MR. BRIDGES: My main objection would be
24 he was not charged with paraphernalia so I would
25 question the relevancy.

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1 THE COURT: Sustained, ma'am.

2 BY MS. BEHARRY:

3 Q Can you read -- let me approach you one more time
4 and give you your results. Can you tell us the
5 quantities of both, the one for Mr. Dunham and the
6 one for Mr. Tobias?

7 A The samples I received from Levance Dunham was
8 going to be the weight of 0.09-gram. That's the
9 same as 90 milligrams in weight. The sample
10 submitted for Margaret Tobias was going to be
11 0.05-grams or 50 milligrams.

12 Q Okay. And would commingling have altered, like,
13 let's say you had the dugs together, would it have
14 altered the state or the nature of either one of
15 them?

16 A If you take and you place these items together,
17 the way that I analyze, no, it would not. I found
18 crack cocaine in both samples, both of them are
19 crack cocaine.

20 Q Okay. Mr. Powell, thank you for your testimony.
21 Please answer any questions Defense may have for
22 you.

23 A Yes, ma'am.

24 THE COURT: Mr. Bridges.

25 MR. BRIDGES: Thank you, Your Honor.

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CROSS-EXAMINATION

1

2 BY MR. BRIDGES:

3 Q Good morning, Mr. Powell.

4 A Good morning, sir.

5 Q Just briefly, you testified that you tested this
6 from the evidence locker that was placed there by
7 Mr. Buck, correct?

8 A Well, he had delivered it to me personally.

9 Q Oh. And you don't have anything to do with the
10 actual collection of this evidence on scene?

11 A No, sir, I'm actually -- I receive evidence from
12 four counties and I just take and analyze that. I
13 rarely in my entire career have only been involved
14 in a couple of arrests where I've been on the scene
15 and both of those are not involving drugs.

16 Q So you were not present, just to summarize, you
17 were not present when this was collected?

18 A No, sir, I was not.

19 Q And how -- so they were labeled 3-B and 3-A. Was
20 it indicated in the Best Kit whose identity was who?

21 A Yes, sir. When I received it, it was actually
22 indicated as to whom it was associated with.

23 Q And your test, test for levels of cocaine base,
24 does it test for any other purities that might be
25 the compound or is it just test for the level of

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1 cocaine?

2 A I actually test for a little over three million
3 different chemicals that could be there. The
4 instrument that I use allows me to take the sample,
5 separate out all the various components and then
6 look at its molecular structure of individual
7 components telling me what it may be so any organic
8 material that is there I can identify.

9 Q But in your report -- and may I approach the
10 witness, Your Honor?

11 THE COURT: Yes, sir.

12 BY MR. BRIDGES:

13 Q This report, State's Exhibit 8, you only list the
14 results, if there's any drug results, you don't list
15 the rest of those components?

16 A Oh, no, sir. I only list a positive test. If I
17 have, there -- it would be voluminous information on
18 the negatives.

19 Q So there was other compounds in there, but you
20 just list the positive part as it pertained to a
21 drug test?

22 A Exactly. Only list materials which are going to
23 be schedule or control. There are other inorganic
24 materials which are not and I do not list those.

25 Q So there was other material in there, it just was

1 not relevant to you, thought was not relevant to the
2 drug test?

3 A That is correct.

4 Q And just to summarize, you were not there when
5 this was collected on the scene before it was given
6 to you to test them, correct?

7 A That is correct. I was not on scene at all.

8 MR. BRIDGES: I have no further questions,
9 Your Honor.

10 THE COURT: Ms. Beharry.

11 MS. BEHARRY: None from the State, Your
12 Honor.

13 THE COURT: Okay. You may step down, sir.
14 May he be excused?

15 MS. BEHARRY: Yes, Your Honor.

16 MR. BRIDGES: I don't have reason to keep
17 him here.

18 THE COURT: Thank you, sir.
19 Ms. Beharry.

20 MS. BEHARRY: The State rests, Your Honor.

21 THE COURT: All right. Members of the
22 jury, I now have to take up some matters with the
23 lawyers, issues of law. I'll ask you to please
24 retire to your jury room. Do not discuss the case
25 among yourselves. Do not begin your deliberations

1 yet please. Thank you.

2 (WHEREUPON, the jury was removed from the
3 courtroom at 10:00 a.m.)

4 THE COURT: All right. Yes, sir.

5 MR. BRIDGES: At this time I would move
6 for directed verdict in rule 19. One, I'm renewing
7 my pretrial motions to suppress both the, because of
8 the traffic stop and also because Jackson v. Denno.
9 And in addition, because of the testimony, Officer
10 Young said he originally placed both these samples
11 in one bag and because there's a potential of
12 mixing, I would say that they're -- and it was said
13 that the Best Kit was in two bags when he was here.
14 I'm not saying that when he was here it was two
15 bags; but at one point he said there was one bag and
16 then you saw it from the video at one point all
17 these samples were in the same area so I, I would
18 argue that that would make it impossible to
19 determine whose drug was whose. This isn't a
20 constructive possession case where there was one bag
21 of drugs.. There was an individual charged, Mr.
22 Dunham, for what was on him and there was an
23 individual charged Ms. Tobias and I would say the
24 evidence that's been submitted doesn't distinguish
25 between the two enough to sufficiently prove this to

1 the totality.

2 THE COURT: All right. As to your
3 pretrial motions, those were placed on the record
4 the other day, good motions, that should have been
5 made, I'm glad that you did; but I've already placed
6 my reasons on the record earlier and denied them
7 earlier on the record. You move for directed
8 verdict today; is that right, now?

9 MR. BRIDGES: That's correct, Your Honor.

10 THE COURT: All right.

11 Ms. Beharry, anything you want in reply to
12 that?

13 MS. BEHARRY: Yes, Your Honor. The, just
14 to briefly clarify, when we were asking officer if
15 he put it in one Best Kit, as you saw in court, he
16 did put it into the one Best Kit but he put the two
17 different samples and separated them and handled
18 them. And we couldn't open it before court because
19 we would have tampered it so we needed to open it
20 and show it in court, Your Honor, so. And we do
21 have actual and constructive possession. They were
22 both in the car. We found the drugs on him. You've
23 seen that on video. So I think that the State has
24 met all its elements and has provided sufficient
25 evidence on all its evidence, on all its elements,

1 Your Honor.

2 THE COURT: All right. Mr. Bridges, I
3 deny your motions. I think there's ample evidence
4 for the jury to decide it at this stage. Anything
5 else, sir?

6 MR. BRIDGES: My only issue with the
7 charge, I do not think this is a constructive
8 possession case in any way. It was on his person,
9 the State's alleging it's on his person. He wasn't
10 charged with the stuff that was found on Ms. Tobias
11 so I don't know we have really need an instruction
12 on constructive possession for this case.

13 THE COURT: Okay. Well, —

14 MR. BROWN: May I respond?

15 THE COURT: When we look at the charges
16 we'll go a little bit more into that. Yes, sir.

17 MR. BROWN: If I can just respond to that
18 or I can respond when we look at the charges.

19 THE COURT: Let's do them when we do the
20 charges, okay?

21 MR. BROWN: When we do the charges.

22 THE COURT: Now while we have this sort of
23 break here, Mr. Bridges, I would like for you to
24 discuss with your client his desires or his
25 intentions; and to the extent that whatever he

1 decides to do, I want it to be the product of
2 thoughtful conversation with you so I'm gonna step
3 out of here for just a few minutes and just -- I
4 don't want him to feel rushed with his decision so
5 if one of y'all will just come and get me, I'll be
6 in my room.

7 MR. BROWN: Your Honor, very briefly
8 before we get off the record, just so we can have
9 this clarified. Mr. Bridges and I have already
10 discussed the curative instruction. We have a
11 handwritten copy. Just so I can put it on the
12 record what we've agreed to and then I can hand you
13 the handwritten copy, okay?

14 THE COURT: Yes, sir.

15 MR. BROWN: Your Honor, the curative
16 instruction in regards to 403 charge that we're
17 proposing and that has been agreed by both sides is,
18 "During the course of this trial you have heard
19 reference to Mr. Dunham being arrested for the
20 offense of forgery. I charge you that when you
21 deliberate in regards to defendant's charge of
22 possession of cocaine base, you shall not consider
23 the fact that he was arrested for the offense of
24 forgery in determining if the defendant is guilty of
25 this charge. To do so would be improper. His

1 arrest for forgery is simply an explanation of why
2 the defendant was searched. It is incumbent on you
3 that you only consider whether the defendant did
4 possess cocaine base either actually or
5 constructively and in determining if Mr. Dunham is
6 guilty of the charge before you."

7 THE COURT: Okay. That suit you, Mr.
8 Bridges, mindful your constructive charge?

9 MR. BRIDGES: Oh, yeah, the rest of that
10 language is fine, yes, sir.

11 THE COURT: I tell you what, after this
12 trial is over based upon how good that sounded, why
13 don't y'all go in the business of writing charges in
14 court?

15 MR. BROWN: Do we need to mark this as a
16 Court exhibit or anything?

17 THE COURT: I'm going to use it for the
18 charge, I don't think so. Take some time with your
19 client and let me know.

20 (WHEREUPON, a recess was taken from the
21 proceedings.)

22 THE COURT: Mr. Bridges.

23 MR. BRIDGES: Thank you, Your Honor. I
24 have discussed my client's constitutional rights to
25 him testifying, the consequences of his testifying,

1 and I believe he made the decision to not testify.
2 You probably need him to put something on the record
3 for that but.

4 THE COURT: Yes, sir.

5 MR. BRIDGES: He's told me he does not
6 want to testify.

7 THE COURT: Mr. Dunham.

8 MR. BRIDGES: Yes, sir.

9 THE COURT: Have you had your conversation
10 with your lawyer about the right to testify or not
11 testify?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you had enough time to
14 talk to your lawyer about this?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Has he answered your questions
17 satisfactory about this topic?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Just to remind you, you do
20 have the right to testify or not testify. If you
21 choose not to testify, which I understand you have,
22 I will instruct the jury at the proper time not to
23 hold that against you because that's your right to
24 do that. Do you understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Anything else, Mr. Bridges?

2 MR. BRIDGES: At this time I renew all my
3 pretrial and motions made during trial.

4 THE COURT: Yes, sir. And again, with all
5 respect to you, sir, all are denied. Now I guess we
6 need to put our charges together.

7 MR. BROWN: That's why I would suggest,
8 Your Honor, we just go ahead and take care of
9 everything, bring the jury out, and go ahead and do
10 closings.

11 THE COURT: All right. I'd rather have my
12 charges locked and loaded and ready to go right
13 after your arguments, instead of stopping and going
14 back and do this. It won't take us long if y'all
15 will come with me 'cause I want you — my custom is,
16 I want you to look at what I already have. It saves
17 us objections later possibly on the record, or at
18 least in front of the jury.

19 MR. BROWN: Yes, sir, Your Honor.

20 THE COURT: So, it shouldn't take long.

21 (WHEREUPON, a recess was taken from the
22 proceedings.)

23 THE COURT: We just met and chosen charges
24 for the jury. Are there any other matters to be
25 addressed about the charges or perhaps all sort of

1 objections or anything?

2 MR. BROWN: No, sir, Your Honor. I think
3 the State's in agreement with the charges that Your
4 Honor has before you.

5 THE COURT: Mr. Bridges?

6 MR. BRIDGES: Yeah, I'm agreement with the
7 charges.

8 THE COURT: All right, bring the jury back
9 in, sir.

10 (WHEREUPON, the jury was returned to the
11 courtroom at approximately 10:55 a.m.,
12 and the following proceedings commenced
13 in open court.)

14 THE COURT: The lawyers are now going to
15 give you their closing arguments after which I will
16 give you the law to apply to the case; and after
17 that, we will ask you to return your jury room and
18 begin your deliberations.

19 Ms. Beharry.

20 MR. BRIDGES: The Defense rests, Your
21 Honor.

22 THE COURT: Okay.

23 Ready, ma'am?

24 MS. BEHARRY: Yes, Your Honor.

25 Ladies and gentlemen, thank you very much

1 for your time, and it's not a shallow thank you.
2 Our system really truly could not work unless we all
3 do our parts. I can stand up here all day and
4 preach the law. The judge can tell all the
5 instructions. If we don't have a jury it means
6 nothing. And if y'all don't have somebody to
7 explain the law to you and the State doesn't have
8 somebody to put forth your evidence or the defendant
9 didn't have somebody to stand up for him, nothing
10 means anything. We all play an important part. And
11 the reason I'm saying that is, yeah, I know you've
12 heard that before; but if we don't treasure what we
13 have and we don't understand our important roles,
14 each and every one of us will lose what we have so
15 that's why I'm telling you thank you. Honestly,
16 from the State's position we just want to say thank
17 you.

18 The funny part of this story is when
19 Officer Micah Young went to the pass-- to the
20 driver's side of the car, he saw the video and then
21 he laughed. But what's important is this part where
22 he says to his co, to his fellow officer, that's
23 Dunham, that's the guy, that's the guy. You know
24 why he was saying that?. 'Cause he just had the
25 flyer in his car, just had briefing that this

1 defendant was wanted. So whether he saw him on the
2 street, whether he saw him in a car, he had probable
3 cause to stop him because of that. That's what led
4 to it. And when he arrested him he saw the drugs in
5 his pocket. You heard the testimony from the
6 chemist. It came back positive for crack cocaine.
7 Not only his, but the other one that was found, they
8 were both positive for crack cocaine. This was not
9 a witch hunt. This was not -- he knew him before.
10 He knew him because he had a briefing. He had the
11 wanted picture which you saw it. That's why the
12 officer was laughing. He said, Bo, I know who you
13 are. He reached in his pocket -- you saw the
14 video -- took everything out of his pocket, laid it
15 on there, bagged it, tagged it. You saw it, you saw
16 them. They were both separate. You saw everything.
17 You saw all the evidence.

18 You've gotten everything before you.
19 You're gonna get to go back to the jury room.
20 You're gonna get to watch the video. You're gonna
21 get to handle everything; and if there's anything
22 that you want to take a look at again, you're gonna
23 get a chance to do that again. You're gonna get a
24 chance, each and every one of you to come back.

25 Now here's the serious part. The State is

1 required to prove beyond a reasonable doubt,
2 everything that I'm about to tell you. First we
3 have to prove beyond a reasonable doubt, which means
4 in my opening statement I told you it means being
5 firmly convinced. It still is that you're firmly
6 convinced that Levene Dunham, which is this
7 defendant, how do you know it's him? Law
8 enforcement had the wanted picture. They identified
9 him not one, but two. So we know that's Levene
10 Dunham. We know that it happened here in the City
11 of Sumter. That's our jurisdiction. We know it
12 happened August 25th, 2017.

13 The elements that we have to prove to you,
14 which the evidence shows beyond a reasonable doubt
15 that they found it in his pocket; that's possession.
16 It doesn't get any better than that. He got it in
17 his pocket. There's actual and there's constructive
18 possession. Constructive possession simply means
19 dominion and control. You got it in your pocket,
20 somebody pulls it out of you, or it's in within your
21 immediate area; that's dominion and control. That's
22 possession.

23 Crack cocaine. Was it crack? If it was a
24 piece of bubblegum we wouldn't be here. If it was a
25 straw, we wouldn't be here. But it was crack

1 cocaine. How do we know that? You've seen the
2 chain of custody. The officer took it out his
3 pocket. He bagged it, tagged it, you saw. You
4 heard evidence, testimony, that he put it in the
5 locker. Nobody else tampered with it from the
6 locker to the evidence room, from the evidence room
7 to the analysis. Mr. Powell, he tested it. They
8 both came back positive. It doesn't get any better
9 than that. So you've got all the evidence that you
10 need. At the end of everything that you've heard
11 today, we are positive that you'll come back with a
12 guilty verdict for Mr. Dunham for possessing crack
13 cocaine here in the City of Sumter in violations of
14 our law. Ladies and gentlemen, thank you for your
15 time.

16 MR. BRIDGES: If I may proceed, Your
17 Honor.

18 THE COURT: Yes, sir, proceed.

19 MR. BRIDGES: Ladies and gentlemen of the
20 jury, I'd like to extend my thanks, too, for your
21 time and attention over these last few days. I know
22 this isn't the most interesting or compelling
23 details in this case, but each case is very
24 important and the right to a fair trial is extremely
25 important to my client Mr. Levance Dunham. So what

1 we have in any criminal case is that the State has
2 the burden of proving each element of the offense
3 beyond a reasonable doubt. In this case they have
4 to prove Levance Dunham possessed crack cocaine
5 beyond a reasonable doubt.

6 Now he's not on trial for giving false
7 information to the police. You saw his interaction
8 with the police officer. You saw he gave a name.
9 The Officer knew it wasn't his name. The officer
10 said he was gonna charge him. Officer said he
11 wasn't free to leave, then he gave him his name.
12 He's not on trial for giving false information.
13 He's also not on trial for any -- you heard
14 mentioned that there was a warrant. He's not on
15 trial for that. It isn't about that. This is about
16 what was found that night during that traffic stop.

17 I submit to there is reasonable doubts
18 about what he actually had in his pocket because as
19 you can see, I'm gonna go reference his video. And
20 this video is free for you to access during your
21 deliberation so I encourage you to go to it when
22 you're back there. You can see at various points,
23 because there was another person in the car that
24 day, there's Margaret Tobias. Her purse was taken
25 out and it was emptied on the back of the car where

1 Mr. Dunham's things were. You're about to see right
2 here and Officer Young testified to this.

3 (Portion of State's Exhibit 1 played.)

4 MR. BRIDGES: You see him empty all those
5 contents of her purse on to the trunk as well. And
6 then after that happens, you go forward a little bit
7 more.

8 (Pause.)

9 MR. BRIDGES: You can see everything
10 scattered about. And then he starts to put it all
11 into the bag, and he puts it in his Best Kit where
12 he says he separated the amount based on who it was
13 from. As you see there, they were next to each
14 other on the back of that trunk. The chemist
15 testified that, you know, there was crack in what he
16 tested, but he didn't take that sample from the
17 field. He just got it from the officer. You go a
18 little bit further you can see how all this is
19 collected. You see the contents of everybody's but
20 Ms. Tobias' purse and Mr. — the contents of
21 Mr. Dunham's pocket are there, out there together.
22 Now Officer Young testified he put, he put the
23 suspected crack into the Best Kit and then went to
24 be tested by the chemist.

25 Well, at this point I just remind you Mr.

1 Dunham is not on trial for any drugs that Ms. Tobias
2 might have had. These are two separate -- the
3 State's claiming that there was two different sets
4 of charges here. There's one for Ms. Tobias had,
5 there's one for Mr. Dunham supposedly had. But the
6 way this was collected, I submit to you the State
7 hasn't been able to show which was, was they'd be
8 able to show Mr. Dunham, in fact, had crack on him
9 that day because the way it's collected, the stuff
10 from Ms. Tobias' purse is mixed with what Mr. Dunham
11 has. And I would submit to you that that creates
12 what we call reasonable doubt, this issue, that
13 there's a gap in the State's story that Mr. Dunham
14 was in possession because it was mixed in with what
15 was taken also from Ms. Tobias.

16 Now I just remind you again, Ms. Tobias
17 isn't on trial today. She had separate charge for
18 what she had. Mr. Dunham had a charge for what he
19 had. And I think it shows that he can't separate
20 the two. And because it can't be determined whose
21 is what and Mr. Powell said, testified, you know,
22 there's all kind of other substances here he doesn't
23 include in this report 'cause he tested for drugs,
24 said that creates a level of reasonable of doubt in
25 that we don't know who possessed what that day.

1 And as the judge will instruct you, if the
2 State has not met the burden beyond a reasonable
3 doubt, the only verdict that can be returned is not
4 guilty. So I submit to you that Levance Dunham is
5 not guilty of possession of crack cocaine because
6 his things and Ms. Tobias' things were mixed up
7 together at the back of that trunk before they were
8 collected and returned to the chemist lab. Again, I
9 thank you for your time and attention and I thank
10 you for your service. I know, like I said at the
11 beginning this is not the top fifty things anyone
12 probably wanted to do today, but we really cannot
13 have a system without you so I thank you, ladies and
14 gentlemen.

15 THE COURT: Yes, sir. Anything further
16 before I follow with the charge?

17 MS. BEHARRY: Not from the State, Your
18 Honor.

19 MR. BRIDGES: Nothing from Defense, Your
20 Honor.

21 THE COURT: Ladies and gentlemen, it is
22 now my turn to talk to you one more time at length.
23 I will once again read to you what we call the
24 charge to the jury which is nothing more than a list
25 of procedures and laws for you to follow. You saw

1 me perhaps while I was shuffling papers around and
2 I'm literally putting this together like a puzzle.
3 And none of this has been like television lawyer
4 shows, trial shows, where it's all scripted and
5 everything is proper and in order so, listen
6 carefully to what I tell you now please.

7 And Ms. Mociun, I appoint you, ma'am, to
8 serve as the foreperson on the jury. I remind you,
9 members of the jury, that during this trial you and
10 I have had certain duties to perform and still do.
11 As the trial judge it is my responsibility to
12 preside over the trial of this case, and I also have
13 the duty to rule on admissibility of evidence
14 offered during the trial, which I did. You are to
15 consider only the competent evidence before you. If
16 there was any testimony ordered stricken from the
17 record in this case during the trial you must
18 disregard that testimony. You are to consider only
19 the testimony which has been presented from the
20 witness stand, any exhibits which have been made a
21 part of the record in this case and any stipulations
22 of counsel.

23 I have the additional duty to charge you
24 the law applicable to this case. I am the sole
25 judge of the law in this case, and it is your duty

1 as jurors to accept and apply the law as I now state
2 it to you. If you already have any idea as to what
3 the law is or what the law ought to be and it does
4 not agree with what I now tell you the law is, you
5 must abandon this idea or your idea because you are
6 sworn to accept the law and apply the law exactly as
7 I state it to you.

8 In every case tried in this court before a
9 jury, the jury becomes the sole and exclusive judge
10 of the facts in the case. A trial judge cannot
11 intimate, state, comment on, or make any statement
12 to a trial jury about the facts in a case. Since
13 you, the jury, are the sole judge of the facts in
14 this case you are not to infer from what I have said
15 during the progress of this trial in ruling upon the
16 admissibility of evidence, or otherwise, or anything
17 that I say now during the course of this instruction
18 to you that I have any opinion about the facts in
19 this case. The law does not allow me to have an
20 opinion about the facts. This is a matter left
21 solely for you, the jury, to determine. As jurors
22 it is your duty to determine the effect, value,
23 weight, and truth of the evidence presented during
24 this trial.

25 There are two types of evidence which are

1 generally presented during a trial: Direct evidence
2 and circumstantial evidence. Direct evidence is the
3 testimony of a person who claims to have actual
4 knowledge of a fact such as an eyewitness.
5 Circumstantial evidence is proof of a chain of facts
6 and circumstances indicating the existence of a
7 fact. The law makes absolutely no distinction
8 between the weight or value to be given to either
9 direct or circumstantial evidence; nor, is a greater
10 degree of certainty required on circumstantial
11 evidence than of direct evidence. You should weigh
12 all the evidence in this case. After weighing all
13 the evidence you are not, if you are not convinced
14 of the guilt of the defendant beyond a reasonable
15 doubt you must find the defendant not guilty.

16 There are two types of evidence which are
17 generally presented during a trial: Direct evidence
18 and circumstantial evidence. Direct evidence
19 directly proves the existence of a fact and does not
20 require deduction. Circumstantial evidence is proof
21 of a chain of facts and circumstances indicating the
22 existence of a fact. Crimes may be proven by
23 circumstantial evidence. The law makes no
24 distinction between the weight or value to be given
25 to either direct or circumstantial evidence;

1 however, to the extent the State relies on
2 circumstantial evidence, all of the circumstances
3 must be consistent with each other and when taken
4 together point conclusively to the guilt of the
5 accused beyond a reasonable doubt. If the
6 circumstances merely portray the defendant's
7 behavior as suspicious, the proof has failed. The
8 State has the burden of proving the defendant guilty
9 beyond a reasonable doubt. This burden rests with
10 the State regardless of whether the State relies on
11 direct evidence, circumstantial evidence, or some
12 combination of the two.

13 Necessarily, you must determine the
14 credibility of witnesses who have testified in this
15 case. Credibility simply means believability. It
16 becomes your duty as jurors to analyze and to
17 evaluate the evidence and determine which evidence
18 convinces you of its truth. In determining the
19 believability of a witness who testified in this
20 case you may believe one witness over several
21 witnesses, or several witnesses over one witness.
22 You may believe a part of the testimony of a witness
23 and reject the remaining part of the testimony of
24 that same witness. You may believe the testimony of
25 a witness in its entirety or reject the testimony of

1 a witness in its entirety. You may consider whether
2 any evidence has exhibited to you any interest,
3 bias, prejudice, or other motive in this case. You
4 may also consider the appearance and the manner of a
5 witness while on the witness stand.

6 I instruct you and emphasize that the fact
7 that the defendant chose not to testify is not a
8 factor to be considered by you in any way in your
9 deliberations and in your consideration on the
10 question of the guilt or the innocence of the
11 defendant. It must not be considered by you in any
12 manner whatsoever. A defendant has the
13 constitutional right to remain silent and the
14 assertion of this right must not be considered by
15 you in your deliberations. I repeat, under your
16 oath you are to draw no conclusions whatsoever from
17 the fact that the defendant in this case did not
18 testify. The fact that this defendant did not
19 testify should not even be discussed in the jury
20 room. The burden of proof as I have stated already
21 is on the State. The Defendant is not required to
22 prove his innocence. The burden of proof remains on
23 the State to prove the guilt beyond a reasonable
24 doubt.

25 The defendant has pled not guilty to the

1 indictment, and that plea puts the burden on the
2 State to prove the defendant guilty. A person
3 charged with committing a criminal offense in South
4 Carolina is never required to prove himself
5 innocent. I charge you that it is an important rule
6 of the law that a defendant in a criminal trial, no
7 matter what the seriousness of the charge may be,
8 will always be presumed to be innocent of the crime
9 for which the indictment was issued unless guilt has
10 been proven by evidence satisfying you of that guilt
11 beyond a reasonable doubt. This presumption of
12 innocence does not end when you begin your
13 deliberations, but it accompanies the defendant
14 throughout the trial until you reach a verdict of
15 guilt based on evidence satisfying you of that guilt
16 beyond a reasonable doubt. The presumption of
17 innocence is like a robe of righteousness placed
18 about the shoulders of the defendant which remains
19 with the defendant until it has been stripped from
20 the defendant by evidence satisfying you of the
21 defendant's guilt beyond a reasonable doubt. The
22 presumption of innocence is not mere legal theory.
23 It is not just a legal phrase. It is a substantial
24 right to which every defendant is entitled unless
25 you, the jury, are satisfied from the evidence of

1 the defendant's guilt beyond a reasonable doubt.

2 The State has the burden of proving
3 defendant guilty beyond a reasonable doubt. Some of
4 you may have served as jurors in civil cases where
5 you were told that it is only necessary to prove
6 that a fact is more likely true than not true, such
7 as by the greater weight or preponderance of the
8 evidence. In a criminal trial the State must prove,
9 the State's proof must be more powerful than that;
10 it must be beyond a reasonable doubt. What is a
11 reasonable doubt in the law? A reasonable doubt is
12 the kind of doubt that would cause a person to
13 hesitate to act, a reasonable person to hesitate to
14 act. Proof beyond a reasonable doubt is proof that
15 leaves you firmly convinced of the defendant's
16 guilt.

17 The indictment charges the defendant with
18 possession of cocaine base, crack cocaine. I remind
19 you that the fact that the defendant was arrested,
20 charged, and indicted in this case is not evidence
21 in this case and cannot be considered by you as
22 evidence of guilt in this case; nor does it create
23 any presumption or inference of guilt. This
24 document is simply the formal written instrument
25 which contains the charges made against the

1 defendant. It is the formal document by which this
2 case is brought to this court.

3 The defendant is charged with possession
4 of cocaine base commonly known as crack cocaine.
5 The State must prove beyond a reasonable doubt that
6 the defendant knowingly or intentionally possessed
7 cocaine base. Knowingly means with knowledge,
8 consciously, not accidentally. Intentionally means
9 willfully, intending the result which actually
10 occurs, not accidentally or involuntarily. Intent
11 may be shown by acts and conduct of the defendant
12 and other circumstances from which you may naturally
13 and reasonably infer intent. To prove possession
14 the State must prove beyond a reasonable doubt that
15 the defendant had both the power and the intent to
16 control the disposition or use of the cocaine base.

17 Possession may be either actual or
18 constructive. Actual possession means that the
19 cocaine base was in the actual physical custody of
20 the defendant. Constructive possession means that
21 the defendant had dominion and control or the right
22 to exercise dominion or control over either the
23 cocaine base itself or the property on which the
24 cocaine base was found. Mere presence at the scene
25 where the drugs were found is not enough to prove

1 possession. A defendant's knowledge and possession
2 may be inferred when a substance is found on the
3 property under defendant's control. However, this
4 inference is simply an evidentiary fact to be taken
5 into consideration by you along with the other
6 evidence in this case and to be given the weight you
7 decide it should have.

8 During the course of this trial you have
9 heard reference to Mr. Dunham being arrested for the
10 offense of forgery. I charge you that when you
11 deliberate in regard to the defendant's charge of
12 possession of cocaine base you shall not consider
13 the fact that he was arrested for the offense of
14 forgery in determining if the defendant is guilty of
15 this charge. To do so would be improper. It is
16 incumbent on you to only consider whether defendant
17 did possess cocaine base either actually or
18 constructively in determining if Mr. Dunham is
19 guilty of the charge before you. His arrest for
20 forgery is simply an explanation of why the
21 defendant was searched.

22 There are two possible verdicts in this
23 case. There is no significance whatsoever in the
24 order in which the state -- in which I state these
25 possible verdicts. It is simply that one must be

1 stated first. Your verdict must be unanimous.
2 Ms. Mociun, when the jury agrees on a verdict you
3 will write the verdict on the back of the
4 indictment, or on the bottom of it, and sign it as
5 the foreperson. Then knock on the jury room door
6 and inform the bailiff that you have reached a
7 verdict. I ask now that you return to your jury
8 room, but do not begin deliberations just yet until
9 you're told to do so by the bailiff. I have a few
10 more matters to discuss with the attorneys.

11 The verdict form with the caption: We,
12 the jury, by unanimous consent find the defendant
13 Levance Dunham, count one, as to the charge of
14 possession of cocaine base, guilty of possession of
15 cocaine base, not guilty. Then you sign it. If you
16 have a question during your deliberations knock on
17 the door and a bailiff will assist you.

18 So, would you kindly take them to their
19 jury room, sir.

20 THE BAILIFF: Yes, sir.

21 (WHEREUPON, the jury was removed from the
22 courtroom at 11:22 a.m.)

23 THE COURT: Anything, lady and gentlemen?

24 MR. BROWN: Nothing from the State, Your
25 Honor. We agree with the charge.

1 MR. BRIDGES: Nothing to do with the
2 charge, Your Honor.

3 THE COURT: Okay, all right. Have y'all
4 reviewed what you want to give to them to make sure
5 it's proper?

6 (Attorneys review exhibits.)

7 MR. BRIDGES: My only thing, I think if
8 the jury wanted to watch the video I think they
9 would have to do it in here just 'cause we have the
10 technology set up.

11 THE COURT: If they want to see the video
12 again, you want me to instruct them that they have
13 that right if they want to.

14 MR. BROWN: They have that right, and but
15 would probably need to bring them out here because
16 we're having to use computers have social security
17 numbers and all that on them.

18 THE COURT: Yeah, I wouldn't do that.

19 MR. BRIDGES: If they ask you a question
20 we want to see the video we can bring them in here
21 and ---

22 THE COURT: Okay. So you don't want me to
23 tell them they can if they want to?

24 MR. BROWN: Just tell them to request if
25 they need to see the video and then we can address

1 that if need be.

2 THE COURT: Okay, all right.

3 MR. BROWN: I think that would be the
4 easiest way to do it, Your Honor.

5 THE COURT: You want me to tell them that
6 though?

7 MS. BEHARRY: Yeah, that's fine with.

8 THE COURT: Can y'all escort me to the
9 door while I tell them that?

10 MS. BEHARRY: Yes, sir.

11 MR. BRIDGES: That's fine.

12 THE COURT: You want to turn the alternate
13 loose now?

14 MR. BRIDGES: Yeah, yeah.

15 MR. BROWN: I think she's, thank her for
16 her service and we're good to go, Judge.

17 THE COURT: And that's, what was her name?
18 That's Ms. Hagood. Is that right?

19 THE CLERK: Yes, Your Honor. Kayla
20 Hagood.

21 MS. BEHARRY: Number 69.

22 THE COURT: Y'all come with me while I
23 tell them that about the video.

24 (WHEREUPON, a recess was taken from the
25 proceedings.)

1 THE COURT: For the record I, with the
2 consent of the attorneys and in their presence I
3 further instructed the jury about the video, if they
4 want to see it, and I allowed the alternates to
5 leave. And I do want to thank these three fine
6 lawyers for your patience and your cooperation and
7 your assistance. I come from the school of thought
8 that these are things we do together, not
9 necessarily by one person, and I don't mind you
10 finding time to tell me what to do sometimes. As I
11 said many times, I don't care how long you're on the
12 Bench there are no instructions that come with this
13 and I do forget to do some things from time to time.
14 And I do appreciate your patience. So we'll see.

15 See, I'm being corrected again, and
16 rightfully so. I want to place on the record that
17 the actual drugs did not go to the jury room.

18 (WHEREUPON, a recess was taken from the
19 proceedings.)

20 THE COURT: I'm told we have a verdict,
21 sir.

22 THE BAILIFF: Yes, sir.

23 THE COURT: Sir, if you'll kindly bring
24 them in.

25 (WHEREUPON, the jury was returned to the

1 courtroom at approximately 11:56 a.m., and
2 the following proceedings commenced in
3 open court.)

4 THE COURT: Ms. Mociun, I understand y'all
5 have reached a verdict.

6 THE FOREPERSON: Yes, Your Honor.

7 THE COURT: Would you kindly hand it to
8 the bailiff please.

9 (Tendered to the Court.)

10 THE COURT: Sir, if you would kindly
11 publish that to the court ---

12 THE CLERK: May I please the Court, Your
13 Honor.

14 THE COURT: Yes, sir.

15 THE CLERK: The State of South Carolina,
16 County of Sumter, In the Court of General Sessions,
17 Third Judicial Circuit, indictment number
18 2018-GS-43-0077, State of South Carolina versus
19 Levance Dunham, the defendant. We, the jury, on
20 unanimous consent find the defendant Levance Dunham,
21 count one, as of to the charge of possession of
22 cocaine base, guilty of possession of cocaine base.
23 Signed Vonda Mociun, July 27, 2018, Sumter, South
24 Carolina.

25 THE COURT: All right, thank you, sir.

1 Ms. Beharry, Mr. Brown, Mr. Bridges, anything?

2 MS. BEHARRY: Nothing from the State, Your
3 Honor.

4 MR. BRIDGES: Nothing from Defense, Your
5 Honor.

6 THE COURT: All right, I'm gonna ask the
7 jury to return to your jury room one more time. And
8 I will once again now while I'm with you thank you
9 for your services this week. You were the ones who
10 were scripted for this jury, but we appreciate your
11 time. If you'd return back to your jury room one
12 more time please.

13 (WHEREUPON, the jury was removed from the
14 courtroom.)

15 THE COURT: All right. If y'all will give
16 me just a few minutes I'll be right back to you
17 here. And we have a sentencing sheet?

18 MR. BROWN: Your Honor, we're asking -- we
19 had misprinted one we had so Ms. Olivia is now going
20 down to print up a new one.

21 THE COURT: No rush. Think about what you
22 want to talk to me about and I'll be back in just a
23 minute.

24 (WHEREUPON, a recess was taken from the
25 proceedings.)

1 MR. BROWN: We can go ahead and do the
2 sentencing phase even if — we can go ahead and do
3 everything but hand you the sentencing sheet. Your
4 Honor, you've heard the testimony at the trial
5 earlier. You've heard the evidence that's been
6 presented. Ms. Beharry did a fine job getting all
7 the evidence out. I think as this was candidly a
8 strong case. Your Honor, Mr. Dunham has had
9 extensive criminal history. This is a second
10 offense which is a 0 to 5 years offense under South
11 Carolina law for possession of crack cocaine. Your
12 Honor, his criminal history expands for 20 pages,
13 includes massive amounts of fraudulent checks. I'll
14 just go ahead and start from the beginning. 1985,
15 malicious injury to property, misdemeanor offense.
16 1990, he had 16 counts of worthless checks. 1995,
17 he was convicted of burglary, as well as ABHAN. He
18 received 90 days followed by three years probation
19 and restitution. Your Honor, there's another
20 assault and battery conviction, that's in 1995. In
21 1996 he had a burglary and a grand larceny where he
22 received 5 years, credit for 13 months. In 2008,
23 Your Honor, and this will be the charge that
24 elevates him to a second offense, he was convicted
25 of possession of cocaine base. Actually, I believe

1 the conviction occurred in 2011 according to his
2 NCIC, that he received 30 months concurrent with
3 another indictment which was for resisting arrest
4 around that same time period. Your Honor, since
5 then he's also had some petit larcenies and habitual
6 traffic offender. Actually, it's habitual traffic
7 offender that that ran concurrent with and a DUS and
8 a burglary. He received convictions on all of
9 those.

10 He has a criminal domestic violence
11 conviction from 2013. And Your Honor, he also had
12 some charges and convictions out of another state,
13 specifically appears out of the state of Georgia
14 where he had issues. And Your Honor, he's also been
15 convicted — and this is not on his NCIC, but
16 Ms. Beharry handled the case. He was convicted of
17 domestic violence second degree just earlier this
18 year.

19 MR. BRIDGES: Well, I want to clarify that
20 on my part. It actually was domestic violence,
21 criminal domestic violence under the old law because
22 the offense occurred in 2014.

23 THE COURT: Yes, sir.

24 MS. BEHARRY: Second offense, Your Honor.

25 MR. BROWN: Your Honor, 2001 out of the

1 State of Georgia he was convicted of family
2 violence, simple battery. He was also convicted of
3 hinderance of emergency medical technicians. He has
4 a couple of driving offenses. Your Honor, that
5 appears to be, other than driving offenses that
6 appears to be his criminal history. Your Honor, he
7 has other pending cases which we are not gonna be
8 hesitant about calling very soon, the forgery of
9 course. I was led to his arrest on this particular
10 case and ultimately the discovery of the cocaine
11 base, that that case is still pending. We will be
12 addressing that soon. I believe he also has another
13 PWID cocaine charge as well.

14 Your Honor, Mr. Dunham has just candidly
15 been a hinderance in Sumter County and Sumter City
16 community for decades so we are requesting the full
17 five years. And I have a sentencing sheet, I'll be
18 handing it to Your Honor in just one second.

19 THE COURT: Mr. Bridges.

20 MR. BRIDGES: Thank you, Your Honor. Mr.
21 Dunham is fifty years old. I just checked, it
22 looked like, it was on my phone, I was checking his
23 bond date on it. It looks like he did eight days.
24 He was arrested on the 25th. It looks like he
25 bonded out September 1st. He, about his record, now

1 he does have, you know, over the course of the last
2 two or three decades he does have a lot of
3 convictions; but if you look at the last ten years I
4 believe that 2011 he pled guilty to several things,
5 including a drug offense. I believe that was his
6 last general sessions level felony. I was his trial
7 attorney for a domestic violence trial. He was
8 convicted of what would have been domestic violence
9 second offense which that's a different thing than
10 domestic violence second degree. He has very strong
11 support from his common law spouse, Ms. Durant, who
12 is over there. As we mentioned on Tuesday, part of
13 the reason why this case occurred today, Mr. Dunham
14 recently had a medical issue where he had to have a
15 finger amputated so he does need special medical
16 attention. And he did serve, he tells me he served
17 in the military in the marines in the '80s.

18 Your Honor, this, the amount of crack
19 found in this was a very small amount. You know, I
20 do not think anyone is alleging Mr. Dunham is some
21 kind of drug dealer. He has pending charges, but he
22 has right to trial, knows he's not been convicted of
23 those. This is a drug possession case. I would say
24 he could be eligible for a suspended sentence or
25 drug treatment or something of that sort.

1 Obviously, given his age and health situation the
2 five years would be very, very, very tough on him.
3 And he also is taking care of Ms. Durant who has
4 health issues. She recently was stabbed in a
5 criminal, separate -- it's not related to any this
6 but -- she has also health problems and he's helping
7 her go to the hospital. So I would just request
8 given his health concerns and the fact that this
9 wasn't a case where he was distributing or anything
10 like that, that you consider that and consider
11 imposing a suspended sentence, Your Honor.

12 THE COURT: Okay. First of all, Mr.
13 Bridges, I'm gonna tell you I think you've done a
14 good job representing him in this case. You have a
15 lot on your plate. You do a good job. Nothing you
16 can be faulted about by anyone in my opinion. I
17 have a United States marine in front of me. Is that
18 right, Mr. Bridges?

19 MR. BRIDGES: Yes.

20 THE COURT: Used to be a member of the
21 United States marine corp.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Out at 2:30 in the morning.

24 THE DEFENDANT: I wasn't --

25 THE COURT: Okay, whatever. Well, let me

1 just get to the bottom line here. The sentence of
2 the Court here, you're incarcerated to the South
3 Carolina Department of Corrections for five years.
4 Thank y'all very much.

5

6

* * * END OF TRANSCRIPT OF RECORD * * *

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WITNESSES

Robert L. Skinner

Sumter Police Dept.

DOCKET NO. 2018-GS-43-0077

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

February

TERM

2018

THE STATE

vs.

LEVANCE DUNHAM

ARREST WARRANT NUMBER

2017A4320100625

Indictment for

Drugs / Possession of less than one gram of meth. or
cocaine base,

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 2/8/2018

VERDICT

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF SUMTER)

Drugs / Possession of less than one gram of meth. or cocaine
base,

At a Court of General Sessions, convened on February 8, 2018 the Grand Jurors of
SUMTER County present upon their oath:

COUNT ONE

That in Sumter County, South Carolina, on or about August 25, 2017, the Defendant, Levane
Dunham, did possess a controlled substance or a controlled substance analogue, to wit: Cocaine
Base, in violation of 44-53-375 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made
and provided.

Solicitor



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

149

COUNTY OF Sumter
STATE VS.

Levance Dunham

AKA:

Race: Black Sex: M Age: 50

DOB: 7 SS: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes to be that [REDACTED] was

TO: Drugs / Possession of less than one gram of cocaine base; 2nd offense

in violation of § 44-53-0375(A) of the S.C. Code of Laws, bearing CDR Code # 3017

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] 78316
Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence.) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments-107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$2500

§ 14-1-213 (Drug Court Surcharge) \$150 \$150.00

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$8.25

TOTAL \$283.25

Clerk of Court/ Deputy Clerk James G. Campbell

Court Reporter: Frances B. Bay

SCCA217 (04/2018)

INDICTMENT/CASE#: 2018-GS-43-0077

A/W#: 2017A4320100625

Date of Offense: 8/25/2017

S.C. Code § 44-53-0375(A)

CDR Code #: 3017

CERTIFIED TRUE COPY
OF ORIGINAL FILED

SENTENCE SHEET

☒ CONVICTED OFCLERK OF COURT
OF SUMTER COUNTY
SOUTH CAROLINA

PTUP days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees.

Presiding Judge:

Judge Code: 2759

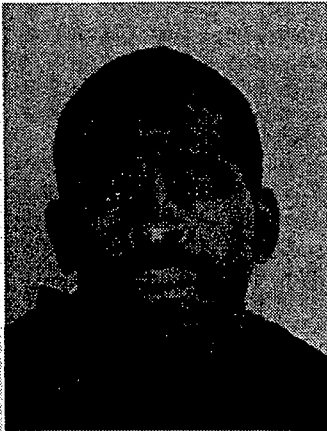
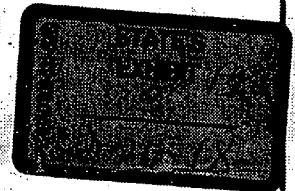
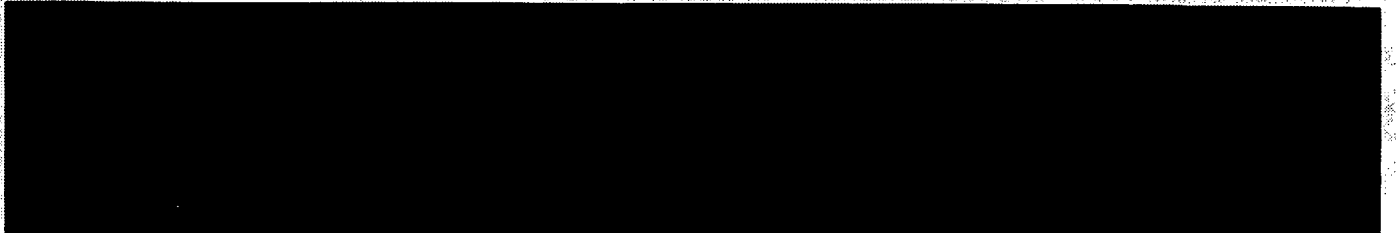
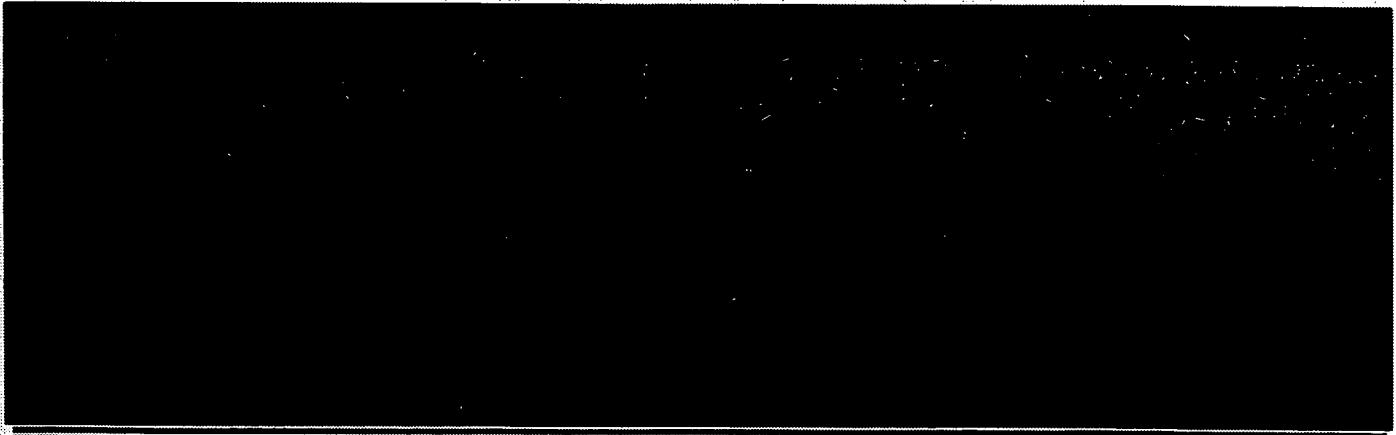
Sentence Date: 2-27-18

RECEIVED

AUG 02 2018

SC Court of Appeals

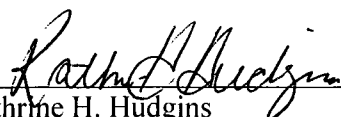
FOR LAW ENFORCEMENT USE ONLY

**WANTED****BY THE SUMTER POLICE DEPARTMENT****LEVANE LEVANCE DUNHAM****Race: Black****Gender: Male****Age: 49****DOB:** [REDACTED]**Height: 5'09"****Weight: 220****Hair: Black****Eyes: Brown****Photo from SLRDC, 1/6/2017****LAST KNOWN RESIDENCE:** [REDACTED] **Drive: Sumter, SC****WANTED FOR FORGERY**

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,


Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 20th day of August, 2019.

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